

TEN YEARS CHIEF JUSTICE
OF THE
BAHAMAS, 1880-1890.

The Reasons of my Resignation.

ADMINISTRATION OF JUSTICE IN BAHAMAS.

CASES REFERRED TO:

THE LUCILE CASE.

THE SANDS *et al.* CASE.

THE TAYLOR CASE. (A Gross Contempt of Court.)

Is Corporal Punishment Legal in such a Case?

THE OPINION OF SIR RICHARD E. WEBSTER,
Atty. General, delivered in the House of Commons,

ON:

“FLOGGING IN THE BAHAMAS,”

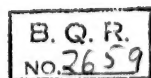
DISCUSSED AND COMPARED WITH STANDARD AUTHORITIES.

By HENRY W. AUSTIN, ESQUIRE,

EX-CHIEF JUSTICE OF BAHAMAS.

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INTRODUCTION.

For the better understanding of these papers in this form, I give a few introductory explanations. I am an advocate of the Bar of Lower Canada, now the Province of Quebec. I was named Chief Justice of the Bahamas, in 1880, by Mr. Gladstone's Government, at a salary of £700 sterling per annum and small fees. The Earl of Kimberley was at that date the Secretary of State for the Colonies. As such, I was the sole judge of all the Superior Courts in the Colony, Chancellor and Judge of the Vice-Admiralty Court. I was afterwards named President of the Legislative Council of the Bahamas. The tenure of office of the Chief Justice is "during pleasure." A Colonial judge (in the West Indies), if removed or suspended by the Governor of such Colony (as he may be under Burke's Act), has a right of Appeal to the Privy Council. The constitution of the Bahamas is composed of an Executive and a Legislative Council and a Legislative Assembly—it is what is called a half-crown Colony. The Governor is appointed by the Crown; his Council (the Executive) is composed of four officials, the Secretary of the Colony, the Attorney General, the Receiver General, and the officer commanding the troops for the time being, and of five local men chosen by the Governor and appointed by the Crown, who hold office during pleasure.

The Legislative Council is composed of nine members, including the President, officials and non-officials, all named by the Governor, and holding office during pleasure.

The Representative Assembly, elected septennially by the people, of 30 members.

The present Attorney General (who is a native of the Islands) is the Speaker of the Assembly, and as Attorney General he is a member of the Executive Council; he is also Advocate General in the Admiralty Court, and allowed private practice as an attorney in all the courts. He is also a Queen's Counsel for the Islands, and the Crown Prosecutor.

During my term of office there were four different Governors appointed: Mr. Callaghan, who died; Captain Lees, now Sir Charles Lees, Governor of the Mauritius; Mr. Blake, now Sir Henry Blake, Governor of Jamaica; and Sir Ambrose Shea, from Newfoundland, who is still the Governor.

LETTER TO LORD KNUTSFORD AFTER MY RESIGNATION.

CANADA.

MONTREAL, TEMPLE BUILDING,
Gt. St. James St.,
11th June, 1890.

MY LORD:

Your Lordship is aware by this time that I have accepted the pension provided for me, which you were pleased to inform me you thought "a *liberal* one," and that I have resigned my office.

I did this by compulsion, and in consequence of your action and menaces; and *particularly*, your having expressed the strong opinion *that the "public interests" required* my retirement.

I have, nevertheless, been condemned by you unheard, or without being furnished with the accusations or charges which have been secretly made to the Colonial Office (as I conclude) against me, or without being informed who my accusers were, or are, or of being afforded the opportunity of meeting them face to face. I had a right, I think, to look to you for protection and support, rather than a hasty condemnation upon *ex parte* proofs, or upon *hearsay* evidence.

Audi alteram partem is a well-known maxim, which applies more particularly when a Chief Justice of a small Colony, where there is *not* responsible Government, is the accused. I claim, now, my right to be *heard*, as I can address you without the intermediation of a Governor to report and comment on my writings; which "reports" are considered "private," or without responsibility, by the Colonial Office.

I will, I think, show plainly that in the reports and communications which Governor Shea has made to the Colonial Office affecting me, or my conduct, he has apparently been acting with those opposed to me, and who were combined to get me removed from office.

I will only go back to the time of Governor Shea's return from England to the Colony in 1888, when he communicated to me your despatch on the commitment of Thomas Taylor for "Contempt of Court," in which you pronounced a *censure* upon *me*, and informed me that, if "I did it again," it might have serious consequences; I had no desire to go through what I did on that occasion, or to have my life in jeopardy a second time, even in the service of my country.

I then waited upon the Governor, and stated that I thought your *censure uncalled* for, and that the legal opinion you appeared to have acted upon, that my sentence was "*illegal*," was *erroneous*, and I stated to the Governor that if such a despatch were made public, it would prejudice me, and be injurious to the administration of justice, by weakening my authority in the Colony.

The Governor then *promised* me that the despatch in question should be seen by *no one*. I pointed out to him that as Mr. Taylor, as Administrator, *had made* the *report* of the contempt case, that he might be entitled to see the despatch. The Governor then said that even Mr. Taylor should not see it. I was satisfied.

A case of the "*Lucile*" in the Admiralty Court occurred about this time, for the *decree* in which case I was attacked in the *Nassau Guardian*, which happens to be the *Official Gazette* of the Islands. I refer, particularly, to that paper of date 27th February, 1889, and to the leader commenting on the *decree* in the "*Lucile*" case. I give only the concluding paragraph:

"This decree has been discussed so freely and fully by the commercial portion of the community, and with such a degree of earnestness, that it would not surprise us if steps were taken to initiate proceedings whereby a grievance which has been smouldering some time, and strengthened by circumstances of late occurrence, will burst into a flame which should result, if properly *represented*, in the *removal* of the *source*." (Italics mine.)

I would remark here that the principal writer of slander in the *Nassau Guardian* is the Rev. Robert Dunlop, minister of the Kirk of Scotland, who is now a great friend of Governor Shea, although he was dismissed from all positions of honor by the Governor Blake (the previous Governor); he is an unprincipled man, a disgrace to his cloth, a wolf in sheep's clothing, and almost the only clergyman who did not sign the addresses to me on leaving.

In that "*Lucile*" case figured prominently one William Culmer, member of the Legislative Assembly, a friend and client of the Attorney General, Malcolm, also owner of the salving vessel "*Douglass*;" he was the chief promoter of the libel suit against the "*Lucile*." He marshalled the evidence, and was himself a witness in the trial before me in the Admiralty Court.

The night previous to my rendering the decree he wrote me the following letter, which was clearly intended to influence my judgment—a bid for salvage!—marked "*Private*":—

"His Honor Chief Justice Austin will pardon the liberty I take in addressing your Honor. While at the dinner-table last evening in conversation with other gentlemen, the question of salaries came up, and some of those

gentlemen said our Chief Justice was barely able to live on his stipend. It certainly ought not to be the case with one of our highest officials, and I think the Governor might bring the matter before the House of Assembly for its consideration, and I have no doubt that body would deal fairly with the subject.

"I certainly would give the matter a fair consideration, and while your Honor has enemies, he has also the good opinion of some who are connected with that body. The thought came to me, after I retired last night, to call on your Honor; but I am, and always have been, a diffident person, and so is Mrs. Culmer. I have repeatedly asked her to let us call on your Honor and Mrs. Austin; but she, like myself, being so diffident, have never done so. I trust your Honor will pardon the liberty I have taken.

"Believe me to be your Honor's

"Faithful and obedient,

"(Signed), W. CULMER."

I acknowledged his letter, and the next morning the decree was rendered; it was unfavorable to the demands of the salvors, and Mr. Culmer did not succeed in his suit.

The salvors had been proved to have been guilty of stealing bags of sugar from the wreck and had not made restitution. The decree found the tender which had been made into Court sufficient. In this "Lucile" case the Attorney General occupied for the underwriters; in conducting the defence he always spoke of Mr. Culmer as "his friend, Captain Culmer," and cross-examined him as a witness very gently indeed.

The Attorney General is the Advocate General in said Court.

A few days after this decree (the Legislature being then in session) Captain Culmer moves in the House a motion as to "whether it was the opinion of the Government, after the censure pronounced upon the Chief Justice by the Secretary of State for the Colonies in the Taylor case, that the Chief Justice should be allowed to continue in the discharge of the important duties of his office."

The Attorney-General, as Speaker of the Assembly, having stated, in reply, that it was a matter for the Home Government to decide, and that they had already made known their decision, Culmer thereupon moved for the despatches on the subject; and the despatch particularly hereinbefore referred to was the *only one* sent down by the Governor, and it was published in the Nassau *Guardian* at length, April, 1889.

The production of this despatch and its publication did me injury, and was contrary to the *promise* made me by the Governor that it should not be seen !

I believe now that it was sent down to help my enemies in the " Lucile " case—Culmer and others ! I can come to no other conclusion, as he (the Governor) *must* have read the article in the Nassau *Guardian* on the decree, and there was no necessity then for sending it down and making it public ; it is plain, also, that the Attorney General and Culmer were acting in concert.

Before the correspondence in the " Sands " case was sent by the Governor to your Lordship, I called upon the Governor to be furnished with the Attorney General's *reply* to my statement of 5th February, but he *refused* to give it. I had a right to see it.

The Governor's letters to me in this matter are couched in insulting and discourteous terms.

On the 16th April, 1889, I received a letter from him, informing me that he had in due course transmitted the correspondence between me and the Attorney General to your Lordship, and that he had been instructed by you to inform me that, " with reference to the allegation in my statement of 5th February last, that the Attorney General would not allow the witnesses in " the Affray case to state the whole truth, and that in this trial facts which " were known to the Attorney General were suppressed, that I must either " withdraw this charge or state precisely the facts which I allege to have been " suppressed, and submit such proof as I could adduce in support of the charge." In reply to this letter I requested the Governor to inform your Lordship " that " my statement referred to was written after the Affray case had been tried, " and at intervals during the progress and after the conclusion of the Murder " case, and when the proceedings were fresh before my eyes ; that the impres- " sions I received and the opinions I formed on those trials were for my " guidance and direction ; that I was a witness (the most important one in " Court) of what had taken place ; that I had already stated the facts, and, in " doing so, I had studiously avoided (as far as possible) comments.

" That I had declined to formulate charges against the Attorney General " although invited to do so by the Governor.

" That I had pointed out to His Excellency that I was the accused and " not the accuser. I was called upon to defend myself against the Attorney " General's attacks.

" That to adopt the course offered me by his Lordship, of producing proof " in support of the allegation in the statement referred to, would, I thought, be " derogatory to the position and office I held, and contrary to my own inclina-

"tions and feelings. That I therefore the more willingly availed myself of the opportunity afforded me of withdrawing the allegation specially referred to by your Lordship, and I therefore withdrew the said allegation from my statement of the 5th of February."

On the 22nd April the Governor writes me, acknowledging my letter of the 20th April, and expressing regret that I had failed to give a direct reply to the demand of Lord Knutsford contained in the Governor's letter of the 16th April, to which I was again referred.

He continued thus (making some alterations): "You are called upon by the Secretary of State either to unreservedly withdraw the serious charge against the Attorney General in your communication of 5th February last, or to state precisely the facts which you allege to have been suppressed, and to submit such proofs as you can adduce in support of the charge."

The Governor concludes thus: "I shall be glad to have an early reply that shall meet distinctly either of the conditions laid down in the Secretary of State's letter of 22nd April."

I answered "that I availed myself fully of Lord Knutsford's offer, and preferred to withdraw the charge specially referred to in my statement of 5th February rather than proceed to the proof of it, and I thereby withdrew the charge referred to."

Notwithstanding these two formal (as I pretend) withdrawals of the charge which I was specially allowed by your Lordship to withdraw, on the 22nd April (and without, of course, submitting my withdrawals to your Lordship), I am favored with a further communication from the Governor, informing me for the first time that your Lordship required to know if the Attorney General was amenable to the serious charge I had preferred against him, and saying "that this demand was not met by the terms of my letters," and therefore he stated "if I did not by an early reply unreservedly withdraw my accusations (in the plural) because they were not susceptible of justification or proof, that he should be compelled under instructions to appoint without delay a commission to investigate the case and report for the information of the Secretary of State."

I need scarcely point out to your Lordship the persistence with which I am pursued in this correspondence by the Governor, and his unjustifiable demands upon me when the matter was in your hands, and which he had no right to make without firstly submitting my withdrawals to your Lordship and receiving instructions. I maintain that I had already done what I had been allowed to do by your Lordship, and that the matter was for your decision, and that the decision had been given and it was final, and

that the Governor had no right to call upon me to withdraw *other portions* of *my statement* with the comment that they were "not *susceptible of justification or proof.*"

I answered his letter on the same day, pointing out that, as I had already *twice* declared that I withdrew the allegation referred to in my statement, I declined to do more; and I said that in case His Excellency appointed a commission, that I trusted the commissioner would not be a local man, as I should have little confidence in such a nomination, and did not believe justice would be done.

On the 16th May the Governor and Council met to discuss the commission, when it was decided that an independent commission should be asked for from England, and the Colonial Secretary (Taylor) was instructed to prepare a letter to this effect and the Council adjourned to next day. On the next day, on motion of the Governor, the proceedings of the previous day were ignored, and without discussion it was decided to try the case themselves.

At this meeting the Governor spoke of me in disparaging terms, styled me "an old fool," "the obstruction," and referred to the Attorney General "as our friend," saying, "we shall know how to protect our friend."

It is well known that the night previous to this meeting he had seen members of the Council to talk them over about this commission.

On the 26th of April, I received a letter from the Governor, informing me that, as I had not relieved the Attorney General from the serious imputations contained in my statement, it had been decided that an enquiry should take place before the Governor and Council, of which I should be notified.

This showed the determination of the Governor to oppress and to harass me, and that they were determined "to know how to protect their friend" (the Attorney General).

On the 11th May, 1889, a constable in uniform served me with a writ of summons in my chambers, to attend before the Governor and Council, exhibiting to me the original of the writ, I conclude for the purpose of harassing and insulting me, and to proceed to judgment upon my default to appear.

It will be seen that I was specially summoned to prove what I had formally withdrawn with your Lordship's permission.

"Before His Excellency the Governor in Council."

"In the matter of the charge of His Honor Henry William Austin against the Honorable Ormand Drummond Malcolm, Q.C., Attorney General, is charged with having suppressed evidence within his knowledge, and thereby causing a miscarriage of justice in a case of *Queen vs. Frank Allen*

Sands, Lewis Philip Knowles, Albert Bethel and William Dunshee, tried in the General Court of the said Islands, Hilary Term, 1889, for an affray."

To His Honor Henry William Austin, etc., etc., etc.

"Take notice that the Attorney General has been cited to appear before the Governor in Council at Government House, 16th May, 1889, at 10 o'clock, to answer the charge herein, and that you *are hereby required to attend at the time and place aforesaid*, and then *and there substantiate the truth of the said charge, and adduce such facts in support thereof as you may be possessed of.* (Italics are mine.)

The Attorney General had been *nominally* suspended although no *public notice* had been given as is *usual in such cases*, and a Mr. Rae, Stipendiary Magistrate, acted as Attorney General during the enquiry, as it appeared.

The whole thing was arranged, and a sham, the *intention* being apparent and the result of the enquiry a foregone conclusion, and although it appeared by the citation and proceedings that the Attorney General was the accused, and was to be tried and put on his defence, I was to be condemned and found guilty of all sorts of things as the sequel showed.

The *personnel* of the Council is an important consideration.

Mr. E. B. A. Taylor, the Colonial Secretary, was an open enemy—he had not spoken to me for two years.

* * * * *

* Mr. Taylor knew my opinion of the doings with the Savings Bank funds which caused its suspension in 1885, or it may be presumed he did, as Governor Blake had asked and obtained my opinion in writing, although he never acted upon it or brought any one before the Courts to be punished.

* * * * *

Dr. Kemp, another member, was a connection of the Attorney General, and controls the Nassau *Times*, his brother being the editor.

Mr. R. H. Sawyer is a bosom friend and supporter of the Attorney General. He was not fond of me because I did not allow him 60 per cent in the Vice-Admiralty Court upon all cases (small cases) of derelict mahogany logs which he obtained from the salvors on the out Islands by *barter*, and then brought into port and into the Court.

Another, Mr. Richard Farrington, was the uncle of the wife of Frank Allen Sands, one of the accused in the Affray case, and one of those who participated in the murder of Gay, as I contended and contend. This Coun-

cil, besides being hostile to me in a marked degree, was not sworn to do justice, were under no oath except their oath of office allegiance, *and to keep the secrets of the Council.*

The Clerk of the Council was a Mr. Gurdon, with no experience as a clerk taking down evidence and proceedings of this kind; was at this time engaged to be married to * * * a *niece* of the Attorney General (he has married her since). He wrote the minutes of the Enquiry under the dictation and control of the Governor and of Mr. Rae, acting as Attorney General, sitting by his side.

They passed a law to give themselves power to swear witnesses on the Enquiry—a *very doubtful measure* to swear witnesses and compulse them when the Court was not sworn! This Act *was not disallowed*, I was surprised to see.

I attended as summoned, and raised no objection. It would no doubt have gratified my enemies *sitting in Council*, had I objected and refused to obey them. I submitted.

The only independent and impartial man who sat in that Council was Major Ellis, of the 1st West India Regiment; he endeavored to see justice done, although almost a stranger to me. Another member, Mr. Joseph Brown (the jeweller), was absent at Audros during nearly the whole of the Enquiry, but by the Governor ordering postponements his return to town was secured, and he took his seat on the morning when the Attorney General read *his defence*, and then he voted with Governor, who had *named him the day previous* to a *seat* in the Legislative Council! Mr. William E. Ambrister was absent during most of the Enquiry, and I conclude he did not vote. The minutes should show this, as everything else that occurred,

I applied for a Commission to Ottawa, Canada, to take the evidence of Mr. Charles T. Gibbs, *who had been present at the Affray trial in Nassau*. An Act was passed to legalize such Commission, and a Commission issued, and was sent to Ottawa for execution, but with *special* instructions from the Governor that it was returned *instantly*. The consequence was that, Mr. Gibbs being temporarily unwell, the Commission was *returned* in twenty-four hours after its delivery *unexecuted*, and I lost the evidence of an important witness. But curious to relate this *Act* was subsequently *disallowed*, so that had I taken Mr. Gibbs' evidence under the Commission it would have been a legal nullity. I send herewith a deposition of Mr. Gibbs made in Ottawa according to the form of the law in Ontario.

The Governor acted as a *partisan* on this Enquiry; he conducted the Enquiry.

My witnesses were kept in a room in the basement of Government House, and called up one by one by the Private Secretary, as required by me. I was allowed a seat on the piazza, and was brought in by Mr. Gurdon when the Court was ready. One morning I was kept sitting there an hour and a half before I was called in.

The Enquiry sat with closed doors. My witnesses were frequently interrupted and insulted by the Governor. Evidence was excluded—questions disallowed by the Governor in a peremptory manner, and answers were not written down in the minutes by direction of the Governor. I was interrupted by the Governor in a peremptory manner, and he told me not to interrupt him, that I was not there as Chief Justice.

I took notes of these things, and so did Major Ellis.

Although I was not *bound* to prove what I had alleged in my statement of the 5th February after the withdrawals I had formally made, I assert that, being *forced to the proof before the Court of Enquiry, I fully proved what I had withdrawn*, “*that the Attorney General had suppressed evidence in that Affray trial, and had kept back evidence, and had caused a miscarriage of justice.*” I kept notes of the evidence before the Enquiry, and *can produce* them, and *so did Major Ellis*, and *if it does not appear by the Report* of the Governor that *it was proved*, I can come to no other conclusion than that the *copy sent* to the Colonial Office by the Governor is *not a true copy of the original minutes*. I *call for the production* of the “*original minutes.*” Subsequently to that Enquiry, in fact recently, the Governor informed me that the Council was *unanimous in its decision*.

I *knew this to be untrue*, for I knew Major Ellis had dissented, and if his dissent does not appear in the copy of the minutes sent to the Colonial Office, it has been kept back by the Governor or Mr. Gurdon.

I am in possession now of the dissent of Major Ellis, and his “findings” as the result of that Enquiry, and I am authorized to use his notes and argument. They were produced and read by him *before* the Council. They are kept with the greatest precision and care. The Governor has admitted to me that the presence of Major Ellis on that Enquiry was most valuable from his acquaintance with the practice of Courts Martial; and the Governor *stated to me* that Major Ellis *agreed with them in their conclusions*. *This I knew to be untrue*. The *motive* for the conduct of the Attorney General on that trial is now more apparent. There is *prima facie* proof that Frank Allen Sands and Lewis P. Knowles, one or both of them, are connected with the wife of the Attorney General in *some degree*, and the firm of Sands Bros. in Nassau are clients of the Attorney General; Mrs. Malcolm was a Sands. The *letter of*

the 3rd July, or notification of the Governor *to me of the decision he and his Council* "had arrived at," is most insulting and shows malice.

He, contrary to all precedent, as President of a *Court of Enquiry*, moved what he called "Resolutions" against me before his Council. The substance of those resolutions is to be found in his said letter to me of the 3rd of July, referred to already.

The Governor proceeded to England to support his own decision, and returned to the Colony with your Lordship's despatch in his pocket. He stated to his Council on his return, that he thought it would be "more satisfactory" if he went to the Colonial Office about it.

Your Lordship notified me that you had come to the same conclusion as the Governor and Council.

I may be permitted now to ask whether your Lordship approves and adopts the insults offered me in the Governor's letter of the 3rd July, informing me of their decision.

During the Enquiry, and previous thereto, there resided in Nassau the Rev. George O'Keefe, a Roman Catholic priest, apparently a great friend of the Attorney General, as they were continually seen together. He also professed friendship for me although I was only slightly acquainted with him; he wrote me letters and sought interviews with me, saying sometimes that he was sent by the Governor and Lady Shea; at other times he said that he came of his own accord. On the 27th of April he came to my house and told me, among other things, that Lady Shea was my enemy; that she was a dangerous woman, and that she could do what she liked with the Governor.

I did not think she was an active enemy until I was told so by Mr. O'Keefe. The Reverend gentleman also told me that if I would only withdraw the case against the Attorney General, I could retire on a pension. He said also that the vote of £200 by the Legislature at that time, and the dinner given the Attorney General, was to support him at that crisis. He also said that Major Ellis, he knew, was the *only one friendly to me* on the Governor's Council. I have four or five letters from the Reverend gentleman, which I can produce if allowed the opportunity.

I am, your Lordship will see, exposing a conspiracy to deprive me of office; it has been successful. I show some of the machinery working and *some* of the parties engaged in it.

Previous to the Message of the Governor (which is marked "No. 5," dated 25th February, 1889), the Governor sought and obtained several interviews with me. He told me he would *vacate my office* if I did not *consent to his*

terms and resign. I *declined to consent to anything*. The "Message" referred to is insulting to me, and, no doubt, was meant to be so. It was sent by the Governor to the Legislative Council in charge of Dr. Kemp, instead of being sent *to me* as the *President of the Council*. The Bill founded upon it was introduced in the House of Assembly by Mr. Taylor, Colonial Secretary, on the evening of the 25th of February, read a first and second time on the 27th February, and passed in *silence*—it had been so *arranged* by the Governor.

In the Legislative Council it was rushed through with the same undue haste, the Council being packed with my enemies (the same members of the Executive Council). I had to *sign* the bill as *President*, "By order of the Council." The bill is not truthful; it says in the preamble, "Your Lordship deems it expedient that I be relieved of my duties." I am not aware that your Lordship ever used these words. I believe these offensive terms are put into your mouth by the Governor and the Attorney General, acting in concert.

Again, it is *untrue* that I had expressed my "willingness to retire." I had merely accepted your Lordship's offer of a pension because I considered it was *imperative*, your having expressed the opinion that "the public interests" required my retirement. I am, however, at a loss to know what "public interests" required my retirement!

The "Message" is also libellous, and so is the "Bill" founded upon it. So that, upon the Bill receiving assent as it did with your approval, and, I presume, upon your advice, it became a permanent insult to me on the Statute Book. I was made take the pension with the insult attached to it, for which I think your Lordship is responsible.

By the second section of the Act it was to come into operation on the day it was "published." The Legislative Council sat at eleven o'clock on Monday, the 3rd of May; the Act received the assent of the *Governor*, and it went that day by the mail to England; but such was the hurry and anxiety of the Governor, and of those acting with him, to get the Bill into immediate operation that he cabled from New York to the Colonial Office to get a hasty assent to the Bill.

There is *malice* apparent throughout in the conduct of the Governor while he was *making professions of friendship to me*!

On the 6th of March, the Governor sends a message to the House, recommending an increase to the salary of my successor, and any future Chief Justice, of £300 a year, "in consequence of the greatly increased responsibilities of the Superior Courts, consequent on the progress of the

industrial developments of the Colony, and the larger interests of which the Courts have to take cognizance of."

All this is a fiction—there *were no* "increased responsibilities of the Superior Courts;" but it was thought by the Governor and his party that, *having disposed* of me, they would do the justice to my successors which they had *refused* to me.

The Nassau *Guardian* (no doubt inspired by the Governor and his clique), on the 21st of May, 1890, in an insolent and libellous article, says: "That the immediate consequence of the Bill retiring Mr. Austin was another measure raising the salary to £1,000." It further says: "The desirability of this increase of salary had been talked about, but while Mr. Austin was in office it would have been *useless to propose it*."

This paper, of course, refused to publish the addresses I received on retiring.

There is another matter: the Governor *interfered* with me in the performance of my duty. On the 7th of December, 1888, I received a note from the Private Secretary of the Governor, requesting me to call upon him. I did so, when he showed me a report and complaint of the Attorney General to the Secretary of State, complaining of my having stopped a portion of his fees in the Admiralty Court. The Governor then told me that "it was a pity to let it go to the Secretary of State, that I had better settle it, that it was a small matter."

I told him that I could not settle it otherwise than I had done; that Mr. Malcolm, as Advocate General before the Admiralty Court, was not entitled to this fee he claimed, *and had been taking* and receiving from the Registrar without *my knowledge*; *that having found this out*, I had stopped it, but I offered to refer the matter to the Admiralty, in London, for decision, and that if Mr. Malcolm was entitled to it, he should continue to receive it. I submitted the case to the Admiralty in London, and the reply was that he was not entitled to this fee.

Mr. Malcolm has been taking and receiving this fee from 1883, when the new table of fees was established, up to the time of the complaint to the Governor, and I think he should be called upon to refund them. The amount could easily be established by the Registrar of the Court.

I don't know what course your Lordship will adopt to do me justice, although a tardy justice after loss of office.

I am entitled to ask that an enquiry be made, and that a Royal Commission be named to enquire into these things; and that I be *afforded an opportunity of being heard* and of producing *proofs of what I allege*. I ask that

I be furnished with a copy of all correspondence and despatches from the Governor Shea to the Colonial Office affecting me, and with a copy of the Report of the Court of Enquiry, and that the Governor be called upon to produce "the original minutes" of that Court of Enquiry, and that I be afforded an opportunity of seeing them.

I invite your Lordship to read carefully the findings of Major Ellis on that Enquiry, of which I now send a copy; and to compare those "findings" with the report made by the Governor.

To read the evidence of Mr. Gibbs, which was excluded from that Enquiry by the sharp practice of the Governor.

I also send a confession of Depaine, now undergoing sentence in Nassau prison for manslaughter (the alleged murderer of Gay), which was sent to me before leaving, with a request that I would consider his case and afford him relief. I promised him that I would send a copy to your Lordship.

This statement confirms the view I took on the trial of the murder, that not only Depaine but *all the others were concerned* in the *murder of Gay*, and Major Ellis came to the same conclusion on the Enquiry, as appears by his notes which I submit.

I regret the unavoidable length of this communication. I shall print a case founded upon it, and circulate it and give it to the public.

* * * * *

I take the honor to be,

Sir,

Your Lordship's obedient servant,

(Signed), HENRY W. AUSTIN.

I send herewith

1. Major Ellis' dissent and notes and "findings" on the Enquiry.
2. Mr. Gibbs' evidence excluded from the Enquiry.
3. Depaine's statement of Confession.
4. Copy of Addresses to me on retirement.

FROM THE COLONIAL OFFICE,

DOWNING STREET.

(Copy)

14th July, 1890.

SIR,

I am directed by Lord Knutsford to acknowledge the receipt of your letter of the 11th of June on the subject of your resignation of the office of Chief Justice of the Bahamas.

In reply, I am to acquaint you that Lord Knutsford considered, and still considers, that after the censure conveyed to you in respect to the matter which was the subject of the inquiry before the Governor and Council, in which censure he felt it his painful duty to concur, and after the scandal caused by your proceedings in the case of Taylor, it was not for the interests of the Colony that you should continue to hold the office of Chief Justice, and his Lordship thought it right that you should be apprised of his opinion.

Lord Knutsford considers that you acted judiciously and with advantage to the public service in accepting the opportunity of retiring on a pension, but it was not his intention that his opinion should be stated in the preamble to the Act conferring the pension, and he regrets that this was done.

Lord Knutsford cannot comply with your request to be furnished with copies of the minutes of the proceedings of the Executive Council in the enquiry into your charges against the Attorney General, and of the Governor's despatch transmitting the minutes.

Lord Knutsford cannot advise the appointment of a Royal Commission to enquire into your allegations against the Governor and the members of the Council of the Bahamas.

I have the honor, etc.,

(Signed), EDWARD WINGFIELD.

COMPLAINT OF THE ATTORNEY GENERAL.

ATTORNEY GENERAL'S CHAMBERS,
Nassau, 2nd February, 1889.

YOUR EXCELLENCY:

During the present sittings of the General Court I submitted for trial, among others, two informations: one, charging four persons with a misdemeanor (an affray); the other, charging one person with murder.

With regard to the facts out of which these proceedings arose, I may state that, after giving them the most anxious and careful consideration in the exercise of my discretion, I proceeded against the parties in the manner above indicated.

The first information was tried on the 17th ult., when the parties were acquitted, and the Chief Justice in his charge stated that they should have been included in the information against the party charged with the murder as aiders and abettors in that crime.

At the conclusion of this charge, and before the jury had left the box to deliberate on their verdict, I addressed the Chief Justice and asked if his remarks were intended to convey an imputation of neglect of duty on my part, upon which he stated that he would not allow me to comment upon his charge, nor would he answer any questions of mine, and rudely ordered me to resume my seat.

Being thus prevented from making any statement in vindication of the course which I had adopted, I took the opportunity, when opening the case of murder (which was afterwards tried on the 30th ult.), of pointing out to the jury the principles of law which applied to the cases, and cited authorities which guided my conduct in the proceedings which I had taken against the four persons before referred to. One other person connected with the case, a boy, I should mention, was examined as a witness at the trials.

The Chief Justice took occasion, in charging the jury in this case, to preface his remarks by an address accusing me, in my capacity of Attorney General, of a gross dereliction of duty in not bringing to trial, as aiders and abettors in the murder case, the four persons who had been charged with the affray, and the boy above alluded to, they having been in the company of the party accused of murder prior to the act of killing; and without attempting to refute the authorities which I had cited, he repeated the accusation again and again, and pressed it upon the jury in a most intemperate manner.

I desire further to call your Excellency's attention to the fact that the Chief Justice had before him, for some time previous to the trial of those cases, all the depositions, and also the calendar of the offences for which I intended to try the parties, and notwithstanding the strong opinion he entertained and expressed as to the liability of such parties, he permitted them to be tried for the misdemeanor in full knowledge that by the laws of the colony he had the power, on a case of misdemeanor coming before him in which the evidence disclosed the commission of a felony, to direct that a prosecution for the higher offence should be instituted.

I have now respectfully to request that your Excellency will call upon the Chief Justice to formulate without delay the grave charges which he has seen fit to prefer against me, in order that (after furnishing your Excellency with my defence), it may be forwarded for the decision of the Right Honorable the Secretary of State for the Colonies.

I have the honor,
(Signed), O. D. MALCOLM,
Attorney General.

GOVERNMENT HOUSE, 4th February, 1889.

SIR :

I am directed by His Excellency to forward to your Honor a letter from the Honorable Attorney General, and the Governor will thank you to furnish him in reply with such a statement as you may deem necessary to make in regard to the allegations in Mr. Malcolm's communication.

Your obedient servant,
To His Honor, (Signed), J. GURDON,
The Chief Justice. Private Secretary.

CHAMBERS, 4th February, 10 A. M.

SIR :

I have the honor to acknowledge your letter of this morning, furnishing me with a copy of a letter of the Attorney General to His Excellency the Governor, dated the 2nd instant. You will do me the favor to state to His Excellency that I will furnish the statement required of me as soon as possible. The Court is still sitting with a murder trial fixed for to-morrow, and as Mr. Malcolm's extraordinary communication will necessitate a somewhat lengthy report from me of the proceedings of the Court, I ask a reasonable delay to prepare the same.

I have the honor, &c.,
(Signed), HENRY W. AUSTIN.

J. GURDON,
Private Secretary.

COPY OF THE STATEMENT DEMANDED BY THE GOVERNOR IN ANSWER TO
MR. MALCOLM'S (ATTORNEY GENERAL) COMPLAINT OF WHAT
OCCURRED IN AFFRAY CASE IN COURT.

CHAMBERS, 5th February, 1889.

SIR :

I have the honor now to furnish your Excellency with a *statement* required of me in regard to the allegations contained in Mr. Malcolm's communication of the second instant.

The letter in question contains separate charges, which I will divide into *three* for the sake of clearness. They all have reference to proceedings in the General Court in which I was presiding in Hilary Term.

The *first* charge is:—"On the trial of a case (called Affray case) on the 17th of January, I would not allow him to comment on the charge, and that I would not answer any questions—and that I rudely ordered him to resume his seat."

The *second* charge is:—"That I took occasion in charging the jury in a murder case (against William Henry Lewis Depaine, tried on the 30th of January), to preface my remarks accusing Mr. Malcolm, in his capacity of Attorney General, of a gross dereliction of duty in not bringing to trial, as aiders and abettors in the murder case, the four persons who had been accused of the affray, and without refuting the authorities he had cited, I repeated the accusations again and again; and pressed upon the jury in the most intemperate and unseemly manner."

The *third* charge is:—"That I had before me, some time previous to the trial, the depositions in these cases, as also the calendar of the offences, which Mr. Malcolm intended to try, and that, notwithstanding the strong opinion I entertained and expressed as to the liability of such persons, I permitted them to be tried for a misdemeanor, with a full knowledge that, by the law of the Colony, I had the power, in case a misdemeanor came before me in which *the evidence disclosed a felony, to direct that a prosecution for the higher offence* should be constituted.

The Criminal Calendar referred to by Mr. Malcolm, the first case is Reg. vs. William Henry Lewis Depaine. This information was prepared by Mr. Malcolm, and charges the said Depaine with the murder of one Shadrack Gay on the 10th December, 1888.

The second case on the Calendar is Reg. vs. Frank Allen Sands, and others, for affray. This information, prepared by Mr. Malcolm, charges Frank Allen Sands, Lewis Philip Knowles, Albert Bethel, and William Dunshee, with an *affray* on the 9th of December, 1889, using, in the description of the offence, the usual technical terms, unlawfully, etc.

These informations, with others, were produced, and on motion of the Attorney General (Mr. Malcolm) were ordered to be fyled.

It may be said here that the Court cannot object to the production and fyling by the Attorney General of any information.

The Attorney General having declared that he would take as the first case the Affray case; and, on motion, the Murder case, the first case on the calendar, was postponed.

On the 17th January, the Attorney General opened the *affray* case to the jury. I made some notes of his address in my minutes, which I give: "He told the jury that the charge was not *very heinous* or serious offence—affray—fighting in the highway on a Sunday. That the charge was to be confined, and did not include a more serious offence which occurred.

"That five or six persons had set upon a man and beat him near the Eastern Parade. They had him down and beat him.

"They left the man they had been beating and run away.

"Then happened the more serious offence which will come next week.

"That this was a simple misdemeanor, and that he wished to keep the case *separate* from the more serious case."

He cited Russell and Archbold, "Affray."

Several witnesses were called for the Crown and examined.

After these examinations the Attorney General addressed the jury again.

He said (from my notes) "that he thought that the affray was established by the evidence, that the Enquiry had *nothing to do with the death of Gay*—that it was a distinct offence."

"That *one* of the *crowd committed* another offence."

"That the magistrate *would not have hesitated*, if there were others guilty, of *bringing them* before the Court."

"You have nothing to do with any case but this case. It is an affray at common law, not statute law."

He then read the Information:—

It charged that this was done unlawfully, etc., etc.

"The witnesses now say that they were not terrified. I am surprised they say so now."

"There is a case of affray without terror."

"Some of the witnesses have not given their evidence with the force they did before the magistrate."

"George Lee says he was frightened in the Police Court."

"He does not believe that the boy was frightened in the Police Court." Demerit (another witness) was not alarmed.

"An important fact was the breaking off of limbs of trees. What were they broken for? No one appears to have had a stick."

"When all was over they find a man was killed."

"There was an assault, would not that be sufficient to constitute an affray?"

"An affray took place, there is evidence of the boy; there was a fight going on; there was the evidence of the boy, the evidence of Thompson and Kelly. What they saw was an affray."

"The evidence of James Henry Thompson, near the burying ground they heard Gay say 'they're murdering me.'"

"There were three men on Gay, two on either side of Gay. Five ran away. The son of James Henry Thompson next—Josiah Kelly."

"The evidence was not shaken. They had the man on the ground. An affray took place. The Crown has established an affray. The defendants are liable."

Mr. Clutsam addressed the jury for the defence, and called three witnesses, George Lord, Anthony Robert, and Nathaniel Elliott.

The Attorney General then addressed the jury in reply. He said:

"I *did* what I had the *right* to do *against* the defendants."

"Has no hesitation in saying there is a case of affray."

"It was a fault of the witnesses to swear differently to what they have done to-day."

"Had given a correct definition of affray."

"There were four boys found on the top of Gay in the street."

"I have done right in bringing this case here and before the public."

"I had the testimony to *justify the course* I have taken."

"Are my witnesses guilty of perjury?"

"I believe the evidence of Nathaniel Elliott because I think him to be a respectable man."

"Do you believe the evidence of the Crown or the evidence of the Defence?"

"Have I proved terror for the Court to say what is terror, and if it is necessary to prove it?"

The Court charged the jury on the law and the facts proved, and gave the opinion of the Court on the whole case as presented.

That an affray was from the French *effrayer*, to frighten.

That it differed from an assault because it was a *public wrong*, and that an assault was of a private nature.

That there must be a skirmish or fighting between two or more. That there must be a stroke given or offered, or a weapon drawn, otherwise that it was not an affray.

That there had been, no doubt, a serious affray. That there had been strokes given and offered, a weapon had been used. That a man had been killed, it was said, in that affray.

I believe I stated my opinion that I thought it had been proved that there appeared to be others implicated.

I also stated that the witnesses of the Crown, Henry James Thompson, Alexander Thompson and Josiah Kelly, whose evidence the Attorney General had spoken of in his address and impugned, appeared to me as worthy of credit in this case as the evidence of Nathaniel Elliott, called for the defence, who had been complimented by the Attorney General.

That there had been nothing proved before the Court to shake the evidence of the witnesses of the Crown, or to affect the character of their testimony, and that the evidence of the Crown was in the opinion of the Court as reliable as the evidence for the defence.

As the jury were leaving the box, the Attorney General rose with a book in his hand to comment on the charge. I did not hear exactly all he said in the confusion of a crowded audience and jury retiring.

I told the Attorney General to be seated, that I could not allow him to comment on the charge, and would not answer questions on the law as I had laid it down.

I did not order him rudely to resume his seat.

It is my practice not to allow counsel to reply to the charge. It is the general practice of courts in my experience, although it is sometimes attempted by counsel acting under excitement, but it is seldom allowed. The charge of the judge is the finishing of the case, it then goes to the jury.

The Attorney General had already addressed the jury *three times*.

I have to keep order. Counsel must submit to the rulings of the Court and practice of the Court *cursus curiæ est lex curiæ*.

The Attorney General is an officer of the Court, and must submit to the ruling and practice of the Court as other counsel.

The entry in my minutes I give.

"The Attorney General rises to comment upon the charge. The Court told him that it was not allowed to comment on the charge, or to question the Court on the law as laid down."

The jury retired at a quarter to three o'clock p.m., and came back in ten minutes with their verdict "*Not guilty.*"

Then there was applause and noise and confusion in which the Court adjourned to the following day.

I will state that I did not in that charge impute to him neglect of duty.

I stated my *opinion* upon the *law* and *the facts proved as* I was called upon to do, and as it was my duty to do.

I stated my opinion openly, without making imputations.

I may also remark here that I considered that the Attorney General conducted the case throughout in a very unusual way. He *limited* the enquiry. He stated in his opening address (already referred to, p. 3), "That this was a simple misdemeanor, and that he wished to keep the case separate from the more serious case."

He would not allow his own witnesses to give their evidence ; he checked them and confined their evidence, so that they could not tell all they knew, as they were bound by the oath administered to them to do. Charles A. Demerit, in particular, was not allowed to tell all he knew, I think.

The Attorney General, also, in his address to the jury which I have given, seemed to attack his own witnesses, and to wish to discredit them.

Such proceeding is against the rule that a party cannot discredit his own witnesses. The Court defended the witnesses for the Crown in the charge.

I come now to the second charge—it is introduced in this way in the letter of 2nd instant :

"Being thus prevented from making any statement in vindication of the course which I had adopted, I took the opportunity, when opening the case of murder (which was tried on the 30th *January*), of pointing out to the jury the principles of law which applied to the cases, and cited authorities which guided my conduct in the proceedings which I *had taken* against the four persons before referred to. One other person connected with the case, a boy, I should mention, was a witness at the trial."

The Attorney General admits that it was "*to vindicate* the course he had adopted" that he took advantage of the *opportunity*, in opening the case of *murder, to point out to the jury the principles of law* which guided his conduct in *formulating* the charge he brought against Frank A. Sands, Lewis P. Knowles, Albert Bethel and William Dunshee, for an *affray*.

He was not called upon to "*vindicate* his conduct," and the occasion

did not warrant his taking advantage (as he says) "of vindicating his conduct." His proceedings, his address to the jury at the opening of the murder case (on the 30th of January) were quite irregular, and might have been stopped by the Court.

He had said to another jury (on the 17th January) that the "*affray case* had *nothing to do with the murder case*," and an argument in *law* to point out to the *jury* in the *murder* case the principles of *law* which guided him "in framing the information in the affray case" was foreign (strictly speaking) to the murder case, and arguments in *law* ought always to be addressed to the Court, and not to a jury and the *audience* in Court, as the argument of the Attorney General in opening the murder case was clearly intended for—he was *hitting at the Court*.

He was allowed to take his own course. He stated at the opening of the cause (I give notes made in the minutes) "That his *duty was to decide* from the *evidence what course he was to take*. He owed a duty to society. That he had to say who was to be tried *and who was not to be tried*."

"That he was bound to give it his whole consideration." He cited from Archbold, principals in the 1st degree.

"The actor—he said prisoner was the actor; principals in the second degree are the other parties implicated. Principals in the second degree—I say no."

Cites Archbold, Roscoe, Russell, cases in point on presence—who present?

"There must be a confederacy between the parties as to common design; none here. Reg. v. Keats, in which several parties were indicted and tried for the same murder."

"In the evidence there was no case against the other parties, I decided."

"It was clear; nothing to show a common felonious design in these other parties." Archbold, 720.

"Found the parties ran off were not implicated in this case."

Russell again, 765:

"What laid down? (reads): I found the men did not go out on a felonious purpose in this case."

Now for the case itself:

He gives definition of murder, then:

Charles A. Demerit was the first witness for the Crown (*the same witness called for the Crown in the affray case* and before the Coroner).

After he had been examined by the Attorney General and cross-examined by Mr. Clutsam for the defence he was examined by the Court; he then said: 'When I first saw Gay he was with two women in the street. It was a quarter

past eight o'clock, the hour that church service came out. St. Matthew's is the nearest church to this place. I did not recognize any of the men. They came up, talking loud.

"They laid hold of Gay and pulled him about. Gay had done nothing; his shirt was hanging out when he came to me. It was about twenty minutes on the outside when I left the house. I came out and found Gay lying on the abutment. The man was laying above the drain on the Parade—old burying ground. The service was over in St. Matthew's Church. When I got there, I found four persons near Gay, a tall man named Thompson; there were about six there.

"I saw people running to the man but I saw none running away. Gay was covered with a sheet. I helped carry Gay to the asylum. Kelly was with me when I reached the wounded man, he did not go to the asylum.

"I believe I have told all I know about the case. After the crowd accumulated about the wounded man I saw a good many men with sticks."

Several other witnesses were examined for the Crown. Now I particularly call attention to the evidence of *James Henry Thompson*. He swore he was down here in December last, he knew Shadrack Gay; he was down at the same time in another vessel. He remembers a Sunday night Shadrack called to a boat to come ashore. He said, "I am half murdered in Burying Ground Bay above Boxing Bay." I came off, landed at the wall a little below burying ground piece when Gay called to me. I crossed Bay Street when I landed and walked up, then heard Gay cry out. I walked a little swifter. Gay cry, "My lord, come here." I was then near burying ground, found Gay just *near Thompson's house*; he *was on the ground, three on top of him, others on either side of him. They had him down, others standing by. I took hold of them. I pulled them off—two—the other got off, two ran round the corner, others went into Thompson's yard, two or three stood outside. One of the men on top of Gay was "Jeff," the prisoner. I pulled him off—two went into one corner, other three went into the yard. Jeff ran inside the fence. I did not see the little boy.*

I saw Gay was cut up. He had only his pants on. He got up and stood a little bit. I then turned away. Saw Gay and my boy in the street. I saw no one then but our boys. I came away. Had gone a little way when I heard Gay say, "My God, I am cut." I turned back again. Shadrack was then going into the sea, not full tide then; when I got to Gay he was standing up. I said to him, "Who cut you?" and he said, "Jeff cut me." I caught hold of him; his entrails were hanging out then.

I sing for assistance. I took off my own shirt and tied up Gay's belly

with it; then we helped him up. He said, "Put me down," he was in such pain. We laid him on the abutment. I helped take him to the asylum.

I went to look for Jeff. I saw Gay afterwards dead in the asylum.

To the Court: It was about a quarter of an hour after I had pulled the men off Gay that I saw him cut.

To the Court: The place where I pulled the men off Gay to the place I saw him cut was as far as the Court House to Bay Street.

He walked after he was cut. It was a little below the drain I found Gay cut. I was not far from Gay when he cried he was cut.

Alexander Thompson and James Moxey confirmed this testimony.

One of the bad effects of acquitting the parties in the affray case was to qualify them to appear as witnesses for their companion "Jeff" in the murder case.

Frank Allen Sands and Albert Bethel were witnesses for defence. They flatly denied all the witnesses for the Crown had sworn to. Nothing else was to be expected!

The Attorney General in his address to the jury in his reply, speaking of the evidence for the defence said that, if the jury believed it, the evidence of the Crown would be of no effect.

The case lasted two days, and the evidence is very voluminous; nineteen witnesses were examined.

I will now mention what occurred in forming the jury.

Nine of the jury who had served on the jury in the *affray* case were called. They were, of course, not challenged by the prisoner, nor were they told to stand aside by the Attorney General, which he should have done; he sat quiet and said nothing.

The Court objected to C. R. Perpall on the ground that he was one of the jury who had tried the affray case. Bosfield, because he had served on the Coroner's Jury. Ernest Macpherson, James Saunders, Theodore Knowles, Robert H. Smith, Samuel J. Smith, George R. George, because they had sat upon the affray case, were ordered to stand aside.

When the turn of the Court came to address the jury (in the charge), it became my duty to *answer* what the Attorney General had said, as he says "to vindicate his conduct," as his remarks were so uncalled for, and were calculated to have a bad effect.

I commenced my charge by citing Blackstone on the duties of Grand Jury. That the Grand Jury were always instructed in the articles of their enquiry and their duties by the judge who presided on the Bench at the opening of the Assizes.

That they then retired to their room and received the indictments ; that they heard the evidence only of the prosecution ; that the finding of an indictment was in the nature of an enquiry or accusation which was to be afterwards tried and determined by the Petit Jury.

That the Grand Jury had only to enquire whether there was sufficient cause to put the party on his trial to see whether there was a *prima facie* case.

That, to find a Bill, at least twelve of the jury must agree.

I then told them that the Grand Jury was abolished here in 1848. I referred to the Act Bahama Law I., p. 87, called, "An Act for the better regulation of Trial by Jury."

The preamble states that, "whereas the prosecution of criminal offences is attended with great uncertainty from the absence of knowledge on the part of the Grand Juries of the particular facts, etc., etc. and the mode of proceeding, etc. interfere materially with the administration of criminal justice and tend to facilitate the escape of offenders."

For remedy, etc., the proceedings by indictment is abolished.

Sec. II. That all examinations, informations, bailments and recognizances, taken by any Justice of the Peace, etc., etc., shall be returned to the office of the Attorney General at Nassau, etc., who shall proceed against and prosecute the person or persons charged and accused in such examinations or informations, or such of them as the Attorney General may not deem expedient to admit as approvers.

Sec. III. That every such information as last aforesaid shall be exhibited in open Court by the Attorney General, or some duly authorized counsel, and shall thereupon be fyled ; and the trial of every such information shall proceed in the same manner as by indictment, etc.

I read the statute.

I then pointed out that the grand distinction between the proceeding by indictment and an *information* was that an indictment was an accusation founded on the *oaths* of a Grand Jury, whereas an information was merely the *allegation* of the officer who exhibits it. I said that I preferred the proceedings before a Grand Jury as much safer, particularly as an Attorney General might fyle his information against any one as he might choose, and proceed on it without asking leave of the Court, and might not proceed in a case if he so thought fit.

I then said that it appeared to me that the Attorney General, under our *local law*, stood exactly in the place of the Grand Jury, and that his duties

were similar, only, instead of preparing an indictment, there was to be an *information*. That his duty was, if he found that there was a *prima facie* case made out or presented and brought under his notice in the depositions taken before the Magistrate or Coroner, to file an *information* and to *inform* the Court of it, and to bring it under the notice of the Court, *sitting the Court*. That he was not *bound* by the *description* or title of the offence given by the Magistrate—that the Magistrate might call the offence what he liked; it was for the Attorney General to formulate the charge upon the depositions sent to him by the Magistrate, and not to rely upon the Magistrate's proceedings.

I then referred to the depositions and proceedings before the Coroner and the findings.

The opinion which that jury expressed upon the culpable conduct of Frank Allen Sands, Albert Bethel, Lewis Knowles, William Dunshee, and George Henry Lee.

The depositions and proceedings before the Magistrate in December, 1888 (13th and 14th December), endorsed "Murder."

To the depositions and proceedings before the Magistrate, 18th December, 1888, "creating an affray," all of which I now furnish copies. I told the jury that these *three* Records had reference to *one event* which occurred here on Sunday, the 9th of December; to the *same facts* told by the *same* witnesses.

That it was clear that it was *one* case; that it *ought not to have been divided or presented in different forms*.

That the Attorney General had all these depositions and proceedings *before him when he formulated* his informations for the Term.

That he was in the place of the Grand Jury, and that if he saw there was a *prima facie* case exhibited by these depositions and proceedings, his duty was to charge the accused.

That he was not to usurp the functions of the Petit Jury and try and dispose of the cases in his office.

That there was a *prima facie* case presented against all the parties, Frank A. Sands, Albert Bethel, Lewis P. Knowles, William Dunshee, George Henry Lee, and William Henry Lewis Depaine.

That the Court was now more convinced than ever that there was a case against them all. That they should have been *charged and arraigned for the murder of Shadrack Gay*, or for manslaughter.

That such was my opinion. I regretted that I could not view the case as the Attorney General appears to have done.

I was again interrupted by the Attorney General. The Court told him that it could not be allowed, that he must remain seated.

The Court then referred briefly to the law of principals in the first and second degree, quoting standard authorities in answer to the law quoted by the learned Attorney General to *the jury* at the opening of the case. The Court said that principals in the second degree are those who are present aiding and abetting at the commission of the fact.

That it was not necessary that the party or parties should be actually present an ear or eye witness of the transaction. He is (or they are), in construction of law, present aiding and abetting if, with the intention of giving assistance, he or they be near enough to give assistance if the occasion arise.

Now the Court said there was proof that all these parties referred to the depositions, or most of them were in this position.

The Court then said that there must be participation in the act—that that they had done so, and that they had acted in concert.

That it was not for a *Grand Jury* to decide whether there had been a "*felonious participation*," that that was a question *for the judge* when the case came before the *Petit Jury*—Case *R. v. Moore*, 1 Leach 314.

"If two persons driving carriages incite each other to drive furiously, and one of them run over and kill a man, it is manslaughter in both." Reg. v. Swindall, 2 C. & K. 230.

"If two persons encourage another to commit suicide, and be present abetting him while he does so, such person is guilty of murder as principal; and if two persons encourage each other to self-murder, and one kills himself but the other fails in the attempt, the latter is a principal in the murder." Again, "if a master assault another with malice prepense, and a servant ignorant of his master's design take a part with him and kill the other, it is manslaughter in the servant and murder in the master." 1 Hale 446.

In a late case, Patterson J. : "That all persons present at a prize fight, having gone thither with the purpose of seeing the prize fighters strike each other, were principals in the breach of the peace." Reg. v. Perkins, 4 C. & P. 537.

Aiders and abettors were formerly defined to be accessories at the fact, but this doctrine is exploded, and it is now settled that all those who are present aiding and abetting when a felony is committed are principals in the second degree, and may be arraigned and tried before the principal in the first degree is found guilty. 2 Hale 223. And may be convicted though the party charged as principal in the first degree is acquitted. *R. v. Taylor*, Leach 360.

I did not tell the jury that all these parties would be convicted, but I said that in my firm opinion there was a strong *prima facie* case against them, and that they should have been arraigned and put upon their trial before a Petit Jury for murder or manslaughter.

The Attorney General seems to make a point in his letter that he had a "discretion" to exercise. I don't think so; if so, it was a *wise discretion*, a legal discretion, he should have exercised—a sort of judicial discretion. Lord Mansfield said that this discretion meant "a discretion guided by law." It must be governed by *rules, not by humours*; it must not be *arbitrary, vague and fanciful*, but equal and regular.

I now pass to the third accusation, that I had before me for some time previous to the trial all the depositions and the calendar, etc.

The depositions before the magistrate in a bundle were sent to me to make extracts from before the Term for my private use at the trials. The coroners in question I never saw until I sent after them recently.

The practice here to save the Attorney General trouble in making office copies is to send the depositions for the Term to the Judge. It is not the right practice, but I found it here and I have allowed it to continue.

I did not permit or give permission to the Attorney General to *formulate his informations as he has done, it was no part of my duty* and I was not consulted; it was not the duty of the Attorney General to consult me. I was aware of our local law 15 Vic. c. 3, sec. IX, which provides that if upon the trial of any person for a misdemeanor it shall appear that the facts given in evidence amount in law to felony, that the Court has the discretionary power to discharge the jury and to direct that such person be prosecuted for felony.

Upon the trial of the *affray it did not* at that time appear to me from the *facts given in evidence* that they amounted to a felony.

The *facts* (all the *facts* as they were before the Attorney General and in his knowledge) did *not come out on that* trial of the affray, simply because they had been suppressed and not allowed to come out. I would therefore not have been justified in the exercise of the discretion which the local law gave me of ordering the parties to be tried for felony.

I was not then in possession of *all* the facts as they were known to the Attorney General, and *as I knew them after the murder case*. I had not an *arbitrary* discretion to exercise, but a discretion guided by law.

After the verdict in the *murder case* the Attorney General again rose in Court and referred me to this section of our local law, which he *might have done previously* on the affray trial.

He may have formulated the informations of the term with a perfect knowledge of our local law (it is presumed he did so), and therefore knew what would be the effect of an *acquittal* of the *parties* in the *affray case*. I think I have now answered all the charges of the Attorney General.

I have no desire to *formulate charges against him*. I simply state what took place, leaving him to draw his own conclusions.

These cases have caused considerable excitement here, and continue to disturb society. The *race* prejudice has been roused, the parties implicated in the case being what are called *white*, and the murdered man being a *black* man. No doubt there has been a grave miscarriage of justice, and I am glad of the opportunity of laying the case before your Excellency.

I have the honor, etc.,

H. W. AUSTIN,

Chief Justice.

In support of this statement

- a. Proceedings before coroner.
- b. Depositions before magistrate in the murder case.
- c. Depositions before magistrate in the affray case.

GOVERNMENT HOUSE, NASSAU.

16th February, 1889.

SIR,

With reference to your Honor's communication of the 5th inst., received here on the 11th inst., I am directed by His Excellency the Governor to inform you that he has given full consideration to the statements it contains which embody such grave charges against the Attorney General; that His Excellency feel it necessary to request that you will formulate the case which seems to you to justify the imputations you have made, in order that it may be transmitted for the consideration of the Right Honorable the Secretary of State for the Colonies in a more concise and intelligible shape.

Your obedient servant,

(Signed), J. GURDON,

Priv. Secy.

NASSAU, 16th February, 1889.

SIR,

I have the honor to acknowledge the receipt of your letter of this date, informing me that His Excellency the Governor requests me to formulate a case in a more "concise and intelligible form" against the Attorney General which seems to me to "justify" the "imputations" I have made, in order that it may be transmitted for the consideration of the Right Honorable the Secretary of State.

In reply you will do me the favor to inform His Excellency the Governor that the *statement* I had the honor to send in on the 11th instant was the only statement I could furnish when requested by your letter of the 5th inst. to make one, and was not a *voluntary* one.

What *occurred in Court* in my *charge* to jury in the cases in question I have given as well as I can from memory and from my minutes.

If my *addresses* to the jury, in presenting to them the law and my opinion on the facts proved on those trials, are to be taken as "imputations" against the Attorney General in the opinion of His Excellency the Governor, I may regret it, but what I said then and there *in Court was said in the performance of my duty*, as I understood it, and was unavoidable.

I am sorry that I cannot well, with proper consideration for myself and the *position* in which I was acting, state what occurred in a more concise and intelligible shape.

I have already made it as concise as possible; in fact, to put the matter perhaps more plainly before His Excellency would necessitate a transcript of the whole of the minutes of the Court, which time would not allow at the date I was called upon for the statement I have furnished.

I have already stated that I had no desire to formulate charges against the Attorney General. I made, and make no imputations unless it is considered that they appear in the charges to the juries in those cases referred to which I have given. Should His Excellency decide to place the matter before the Secretary of State for the Colonies, I would much prefer it, in justice to myself, that the *whole* transcript of the minutes and proceedings in the Court in *both trials* (the affray and the murder cases) be also sent.

I have the honor, etc.,

To J. GURDON,

Private Secretary.

H. W. AUSTIN,

Chief Justice.

MEMO:—I asked the Governor to *furnish* me with the *answer* of the Attorney General to my statement, but he *declined doing* so, saying it was a *general answer*. As I was the accused, I had a right to see the answer, and to judge whether it was a *general* answer.

Mr. Malcolm's letter to the Governor he never attempted to prove. The proceedings in our Courts were not reported in our small newspapers, the only report of the murder trial, referred to by the Attorney General, appeared in *The Freeman*, February 5th, which I give.

NASSAU, Tuesday, February 5th, 1889.

QUEEN *vs.* DEPAINE. MURDER.

"In his charge to the Jury, the Chief Justice explained that since the abolition of the Grand Jury of the Colony in 1848, the duties of that body devolved upon the Attorney General, and he asserted that the law officer of the Crown had in his possession sufficient evidence showing a *prima facie* case against the men tried for the affray as accessories, and that they should have been brought to trial with the prisoner charged now with murder—as principals in the second degree. The jury brought in a verdict of manslaughter.

(The letters of 16th, 22nd and 26th of April, 1889, about the withdrawal of the allegations to suppression of evidence, referred to in the letter of 11th June, 1890, to Lord Knutsford, should be read here to avoid repetition.)

—

Special Act passed by Legislature on demand of Governor, received his assent 9th of May, under which I was *summoned* on the 11th May, 1889.

52 VIC., CAP. 7.

AN ACT

Authorizing the Administering of Oaths in certain Cases.

(Assented to 9th May, 1889.)

MAY it please the Queen's Most Excellent Majesty that it may be enacted and be it enacted by His Excellency Sir Ambrose Shea, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over the Bahama Islands the Legislative Council and Assembly of the said Islands, and it is hereby enacted and ordained by the authority of the same as follows :

I. In *any inquiry held or made before* the Executive Council of these Islands the Governor by order in Council may order and direct that the

evidence and statements adduced and brought forward on such inquiry shall be given and taken on oath and the Clerk of the said Council shall have power and authority to administer all oaths required to be administered on any such inquiry.

II. All persons wilfully deposing or affirming falsely in an inquiry before the Executive Council of these islands shall be deemed guilty of perjury and shall be liable to all the pains and penalties attached thereto.

III. When an order has been made under the first section of this Act it shall be *lawful* for the said Council to cause *Summonses* to be issued under the *hand* of the Clerk of the Council requiring the attendance of any person before the said Council at a time and place to be specified in such summons, to give evidence upon oath of the truth of any facts appertaining to such *inquiry or any other matter* touching or relating thereto.

IV. Every person so summoned who shall neglect or refuse to appear according to the *exigency* thereof, or, who having so appeared shall refuse to take the oath, or shall refuse to give evidence, or to answer according to the best of his knowledge and belief any question when thereto required shall for every such default or offence be liable to be imprisoned for any period not exceeding Twenty days.

V. The Clerk of the said Council when so directed by the Council shall have power to issue a warrant for the commitment to the Nassau Prison for the period mentioned in the preceding Section, of any person neglecting or refusing to attend when summoned under this Act, or having attended refusing to answer any question when thereto required.

VI. Such warrant shall be executed by any lawful constable of these Islands in the same manner as warrants issued by any Magistrate or Justice of the Peace are now executed by such.

SUMMONS UNDER ACT 52 VIC., C. 7.

TO HIS HONOR HENRY WILLIAM AUSTIN,

CHIEF JUSTICE:—

Take notice, that the said Attorney General has been cited to appear before His Excellency the Governor-in-Council, at Government House, in the City of Nassau, on Thursday, the 16th of May, A.D. 1889, at ten o'clock in the forenoon, to answer to the charge herein; and that you are hereby required to attend at the time and place aforesaid, and then and there to

substantiate the truth of the said charge against the said Attorney General, and to adduce such facts in support thereof as you may be possessed of.

(Signed,) J. GURDON,
Clerk of Council.

I was summoned under the above Act (liable, I presume, to all the pains and penalties) although I was President of the Legislative Council, and the Legislature then sitting.

The Act was rushed through the Legislature, no copies printed being issued, as was usual; it received the assent of the Governor on the 9th May, was signed by me as *President of the Council*, and, on the 11th May, I was *served by a policeman in uniform, with his hat on, in the Judge's Chambers, in the Court House*, with the foregoing summons—the policeman exhibiting to me the *original* of said summons, I conclude to enable the Governor and Council to have a return of service, so as to proceed against me rigorously should I neglect to appear, as provided by said Act, sec. 4.

I now give the summons, or subpoena, for the witnesses under this Act :

“To Samuel J. Bosfield, Ernest W. McPherson, and Charles A. Demerit :—

“You are commanded that all business being laid aside, and all excuses, you, and every of you, appear in your proper persons before His Excellency the Governor-in-Council, at Government House, on Friday, the seventeenth day of May, instant, at ten o'clock in the forenoon, to testify the truth, according to your knowledge, in an Enquiry now pending before His Excellency the Governor-in-Council, into a charge preferred by the said Chief Justice against the said Attorney General of suppressing evidence within his knowledge at the trial of Frank Allen Sands, and others, on a charge of affray in the General Court, Hilary Term, 1889, and this you, or any of you, shall by no means omit, under penalty of imprisonment.

“Witness His Excellency,

“Signed and Sealed.

“[L.S.]

“J. GURDON,

“Clerk of Council.”

Fortunately, there were no *commitments* under this Act, although many witnesses were deprived of their personal liberty during this enquiry.

I was kept for many days a prisoner, I may say, by this Court of Enquiry, at great inconvenience, away from public duties, deprived of my

personal liberty. The whole thing was an oppression and trespass upon Her Majesty's subjects in my opinion.

The *Freeman*, the only independent newspaper in the Colony, seemed to grasp the position, and to see the danger and oppression of such an Act. It sounded the alarm. The other two papers, the *Nassau Guardian* and *Nassau Times*, preserved an ominous silence. The *Nassau Guardian* is the Government organ, *Official Gazette*.

The FREEMAN, Tuesday evening, May 7, 1889.

" IS IT TO BE A STAR CHAMBER ?

" A dubious looking measure passed the Lower Branch of the Legislature last week, which, from the peculiar circumstances surrounding its introduction in the House, and the secrecy and haste of its passage, would seem to indicate that it is one of singular importance to, at least, the Government.

" The measure provides for investing the Governor-in-Council with the power to administer oaths to persons giving evidence under certain circumstances before the Council, such persons thus becoming amenable to all the pains and penalties attached to an oath taken before a Court of Justice ; also to compel persons to give such evidence with power to summarily inflict punishment by imprisonment for refusal to comply. The Bill was introduced by the Colonial Secretary, without previous notice, on Wednesday night ; it passed its second reading and committal on Thursday night without apparently eliciting the slightest attention on the part of the members, who had no printed copies of the Bill, and went through its final course on Friday night—thus making its uninterrupted introduction and passage in three consecutive sittings of the House. -

" Obviously there is some reason why such powers are not given in Her Majesty's Commission appointing Her Representative and Delegate to the Government of the Colony ; and knowing the temper of the Oligarchy who control the machine here, we deem it a matter to cause a little apprehension to the people when such powers are surreptitiously conferred by the Legislature upon Her Majesty's Representative and an irresponsible Council.

" *What is it for ?* Have we not a Court of Justice, with all the staff and paraphernalia of a Court of Appeal, beside a Judge of Common Pleas, two Stipendiary and Circuit Magistrates and a host of Justices of the Peace and Out-island Justices ? Is it for some great State trial for which our present Courts are not competent ? If there is any question so complex and important as to be above trial by our present Courts, by all means let us have a ROYAL

COMMISSION. It is our opinion that in the present networked state of affairs a Royal Commission to investigate certain little matters on the spot would do heaps of good for the Colony."

I looked upon this Act, 52 Vic. C. 7, as unconstitutional, a usurpation of power by the Governor and Council. The Act, no doubt, was drafted and prepared by the Attorney General (Malcolm), the legal adviser of the Governor and *Speaker* of the *Legislative Assembly*. The Act created a Court with powers equal to and beyond those of Queen's Bench. It created a new offence. The Act has only to be read to see the extraordinary powers conferred by it upon the Executive Council—oppressive and against the liberty of the subject, a Council *conducted* by the Governor. The Governor seeks and obtains powers from the Legislature (of which he was the head and the enacting power) which were not conferred upon him by his commission, for the purpose of trying a question which had arisen in the highest Court of the Colony (a question of law and procedure), between the Chief Justice of the Colony and the Attorney General (a *member* of his Council), the Chief Justice being President of the Legislative Council. This *Act* was subsequently *allowed* to stand by Lord Knutsford or Her Majesty's advisers, and is to be found in the Statute Book of the Colony. It ought to have been *disallowed* in my opinion, although it had served its purpose, as it was assented to on the 9th May, and put into operation on the 11th of May, by serving the summons upon me.

Copy of letter from The Rev. Father George O'Keefe :

NASSAU, Monday Evening, February 11, 1889.

MY DEAR CHIEF JUSTICE,

You are already aware that I know something of the controversy between you and the Attorney General. To be plain with you I know that he has written to the Governor *demanding that he, the Governor, bring the matter in dispute between you to the attention of the Secretary of State for the Colonies.*

I, of course, do not, and cannot enter into the merits of the case between you, but I beg you to believe that you have my sincere sympathy and unbounded respect. I hope then that you will not consider me impertinent if I say to you that I should be sorry to have this matter go home to the Colonial Office at the present time, or during the present administration.

I see but one way to prevent this, and that way is the following:—

I would respectfully suggest, sir, that you answer the Governor's communication by saying that you regret there should be any disagreement between you and the Attorney General; that there may have been faults on both sides; that you are willing to submit the matter in dispute to the arbitration of the Governor, and that you will abide by any decision the Governor may come to in this matter. Such action on your part would throw the whole responsibility on Sir Ambrose Shea, and I am confident he will be equal to it.

If my suggestion (made through sincerest friendship and esteem for you) meet with your approval, I think there is still time to act on it.

With your permission I shall wait on your Honor to-morrow morning about 9.30, and we will discuss the matter. I hope it may meet with approval, as I am confident no real interest will suffer by delaying the appeal to the Secretary of State *qui lente festinal in tuto ambulat, et qui in tuto ambulat longum iter facit.*

I would wish the contents of this letter (which is written entirely on my own responsibility) be kept secret between you and me.

Your most obedient servant,

(Signed), GEORGE O'KEEFE.

TO HIS HONOR

THE CHIEF JUSTICE.

(Memo. on the envelope of the letter: "I met him and the Attorney General driving together on the day he wrote the letter—the date.)

He came to my house the next morning. He said he had come about the difficulty between me and Mr. Malcolm; that the Governor and his wife had been to him about it at his house, and asked him to see me. I told him that I must answer the charges the Attorney General had made against me in his letter to the Governor, and that it would be for the Governor to decide.

Wednesday, 12th Feb.

MY DEAR CHIEF JUSTICE:

I have received your note, though in it you are very considerate of me. I gather from it that I have unduly interfered in matters which did not concern me. I am very sorry, and beg you still to believe that I was influenced by the kindest motives towards your Honor.

Thanking you for being so patient with me, I remain, sir,

Your Honor's obedient servant,
(Signed), GEORGE O'KEEFE.

Saturday, April 27th, 1889.

MY DEAR CHIEF JUSTICE:

I am anxious to have a conversation with your Honor alone.

I am not instigated to this by anyone, but I have learned something which I think you ought to know. On hearing it, you, yourself, will be the best judge of its value. If it were not for your position, I would ask you to do me the honor to come to my house any time in the evening after half-past seven o'clock.

As I can hardly ask the Chief Justice to do that, I ask you to do me the honor of receiving me sometime this evening or to-morrow.

Your Honor's obedient servant,
(Signed), GEORGE O'KEEFE.

(MEMO, ON ENVELOPE OF LETTER MADE BY ME THE MOMENT HE LEFT.)

"O'Keefe called at my residence at eight o'clock, and remained talking violently till half-past nine o'clock.

"The only proposition seemed to be that I withdraw my statement to the Governor of Malcolm's proceedings.

"I listened; he told me that he came of his own accord.

"That he knew that if I would resign I could do so on £350 a year.

"He told me also that the only one on the Governor's Council who was at all friendly to me was Major Ellis. He said he was intimate with the Major. He said he knew Lady Shea was my enemy, but that he thought at one time that the Governor was my friend, but that he did not think so now. He said Lady Shea was a dangerous woman; that she had done much to injure him; that she could do what she liked with the Governor."

I wrote to him on the following morning.

Sunday Morning, 28th April.

SIR:

I made some notes of what you told me last evening at the interview you sought and obtained.

I am more convinced than I was before that there is a conspiracy going on here to ruin or crush me, or to expel me for the purpose of screening Mr. Malcolm, or to elevate him. He is *your* friend, as you informed me last night; I must be allowed to tell you that when the time comes for me to defend myself, I shall be compelled to call upon you to tell *all* you know.

You seem to be *au courant* with all the movements of those I take to be inimical to me.

I ask myself, can it be solely in my interest and for my welfare that you are induced to come to me to give me all this information? I hesitate to think so. It is so unlike my experience of human actions!

Forgive me, if I am wrong or unjust to you.

I must also tell you that I shall use your letters, if necessary, in my own defence. You request me not to show them, or one of them; but that is not binding on me. There is a combination to persecute and oppress me, and I am now fully on my guard.

Further, when the time comes, I may feel it my duty to bring the matter under the notice of your Superior in the Church.

I am, sir,

Your obedient servant,

(Signed),

HENRY W. AUSTIN.

TO REV. FATHER O'KEEFE.

NASSAU, April 28th, 1889.

SIR :

On fuller consideration of your letter, I am forced to the conclusion that only one course of action is open to me.

You state your intention of compelling me to give evidence in connection with certain matters on which I have spoken to you.

I am perfectly willing to give evidence on oath as to the remarks you allude to, but I protest against the use you intend to make of private conversations which you once solemnly assured me you would hold secret and confidential. Of your own act you release me from the obligation of secrecy; but it becomes my duty to report to His Excellency the Governor the following statements you made in the conversation which you decline to consider privileged, connecting His Excellency, referred to in your Honor's letter of to-day:

1. That the Governor was conspiring with the Attorney General to expel you from your office with a view to the latter obtaining that position.

2. That the Governor had submitted all your communications in the case between your Honor and the Attorney General to the latter, and that you were sure the Attorney General has assisted in preparing the replies.

I sincerely regret that your Honor should have placed me in this position, and that you should see fit to act in a manner which appears to me not only unfriendly but dishonorable. I have the honor to remain,

Your obedient servant,
(Signed), GEORGE O'KEEFE.

QUEEN STREET, Sunday night.

SIR,

I desire to acknowledge your letter of this evening (just received), threatening me to report to His Excellency what you say took place last evening at my residence. I caution you. I deny what you say—it is false.

There were others in my house who, fortunately for me, heard what took place between us.

You were watched and suspected! I must leave you in the enjoyment of your wicked designs, so much in character with your sacred office.

I am prepared to face you, whenever you like to give me an opportunity, before His Excellency.

Your obedient servant,
HENRY W. AUSTIN.

TO REV. GEORGE O'KEEFE.

“ON TOP OF A VOLCANO.”

A letter from Mr. Camplejohn, Judge of the Court of Common Pleas and the Coroner for the Islands, who held the inquest on the murdered man Gay. He was examined as a witness on the Enquiry before the Governor and Council; a great friend of Attorney General Malcolm.

Thursday, 18th April, 1889.

DEAR CHIEF,

Since seeing you yesterday, I have reason to ask you to act wisely in this matter of the Attorney General, and think over whether it would not be advisable to withdraw your charge against him “with suppressing most important evidence.”

No more serious charge could be laid against any man.

Can you prove it?

If you cannot you will *in all probability* be asked to resign.

You are on the top of a volcano.

If you are sick and disgusted with the whole affair, and wish to retire, ask for a pension and I have good reason to know that you will get a good one.

Talk the matter over with Mrs. Austin.

If you withdraw the charges you can easily state some reason, that you did it impulsively, etc.

I am writing you solely in your interest, and with the most sincere feelings of friendship which I have always entertained towards you.

Believe me faithfully yours,

CAMPLEJOHN.

MINUTES AND EVIDENCE BEFORE COURT OF ENQUIRY.

GOVERNMENT HOUSE, Nassau, 16th May, 1889.

Fac-Simile of the Minutes of the Court of Enquiry, kept by Major Ellis, a member of the Court of Enquiry.

The Chief Justice calls witnesses.

1st. *Edward Duncombe, duly sworn* by Clerk of Council: I am Clerk of the Crown and Custodian of the Records, and Registrar of the General Court of the Bahamas. I am an attorney of that Court and a native of these Islands. The Chief Justice is the sole judge of that Court. I produce three registers of that Court: The General Court, Criminal Jurisdiction, Hilary Term, 1889. Minute Book. First two books kept by me. I prepared the third book, which was commenced 2nd Oct., 1888; it contains the minutes of the Chief Justice in his handwriting. I produce the Coroner's inquisition in case of the death of Shadrack Gay, opened on 10th December, 1888.

(The Governor here *interrupts* the Chief Justice to find *fault with the course he is adopting*.)

The Coroner is E. G. Camplejohn, Esq. The Inquisition was fyled 11th December, 1888. The following witnesses were examined by him: Charles Allen Demeritt, Ida Stevens, Euphemia Jane Fernandez, Alexander Thompson, James Henry Thompson, James Moxey, George H. Lee, W. Robinson, M.D., Doctor Holmes.

Verdict was against Henry Louis Depaine for Wilful Murder.

On returning the verdict the jury requested the "*Coroner to place on record their censure of the culpable conduct and proceedings of Frank Allen Sands, Albert Bethel, Louis Knowles, William Dunshee and George Henry Lee, who, from the evidence, although not criminally are yet morally guilty, being accessories before the fact of the final issue, the murder of Gay.*"

The jury viewed their conduct as being disgraceful in the extreme.—Signed by Coroner.

The day after filing Inquisition, *I delivered it to the Attorney General. I afterwards got it from the Attorney General and gave it to the Chief Magistrate Thompson. The Attorney General returned it to me after the trial of the murder case on January 29th or 30th. Inquisition produced and fyled.*

Early in February I remember making a copy of draft of statement.

(The Governor again interrupts the Chief Justice, saying those papers were not disputed.)

Chief Justice says the papers were referred to by the Attorney General, *he had them in his possession one month, and was acquainted with their contents.* Witness continued :

I produce depositions of witnesses taken at the Police Office, before T. A. Thompson, Esq. (fyled as P), endorsed "*Nassau, N. P., 18th Dec., 1888,*" the witnesses examined by Mr. Thompson : Charles A. Demeritt, Ida Stevens, George Lee, James Henry Thompson, Alex. Thompson. Mr. Thompson has now left the Colony. I don't know where he has gone. These depositions were filed by me on the 17th January, 1889, after the trial of the affray case. I received them from the Attorney General. The depositions are in Mr. Thompson's handwriting.

I produce depositions in Police Court, *Reg. v. William Henry Louis Depaine*, in handwriting of Mr. Thompson, Magistrate, signed by him, taken on 13th and 14th Dec., 1888. The witnesses were Charles Demeritt, Ida Stevens, Geo. Lee, Alex. Thompson, James Henry Thompson, William Kelly, George Colebrook, James Moxey, Euphemia Jane Fernandez, Albert (or Alfred) Kelly, James Williams, Robert Kelly, Nathaniel Elliott, W. Robinson, M.D., Dr. Holmes, M.R.C.S.E. I presume the Magistrate delivered these depositions to the Attorney General.

(The Attorney General acknowledges having received them.)

The Attorney General handed them to me on January 30, 1889. I fyled them. I made a copy of them, and then were sent to His Excellency the Governor on February 5th.

I also produce deposition of Shadrack Gay made before the Police Magistrate, filed Dec. 10, 1888 ; it was given to me the day after it was taken.

I gave it to the Coroner, and on its return from him I gave it to the Police Magistrate.

I produce an Information in the General Court, 1889, *The Queen v. William Henry Louis Depaine*, for murder; it was No. 1 in that Court. It was filed by me in open court, on the 15th January, 1889, on the motion of the Attorney General. It is in the handwriting of the Attorney General, and is signed by him. This was an Information informing the Chief Justice that Depaine, on the 10th December, 1888, did murder and——

(Governor *again interrupts and finds fault with the procedure.*)

(The Chief Justice explains that his object is to show that nearly the same witnesses were examined in two cases.)

Witness continues :

The witnesses for the Crown were Charles A. Demeritt, Ida Stevens, Euphemia Jane Fernandez, Geo. Lee, Alex. Thompson, James Henry Thompson, William Kelly, Geo. Colebrook, James Moxey, Albert Robert Kelly, Nath. Elliott, W. Robinson, M.D., F.A. Holmes, M.D. Seventeen witnesses were examined.

There were three witnesses for defence, Frank Allen Sands, Albert Bethel, Nathaniel Elliott.

The trial took place on the 29th and 30th January, 1889. He was tried for murder, and a verdict of manslaughter was returned. I produce certified copies of said Information made by me.

The murder is charged in Information No. 1 to have occurred on Dec-10th, 1888.

The affray (Information No. 2) to have occurred on the 9th December, 1888.

I produce paper marked Criminal Calendar, Hilary Term, 1889, in handwriting of Attorney General.

(The Governor again interrupts Chief Justice and complains of the procedure.)

The *Calendar* was prepared by Attorney General. The murder case is No. 1, the affray case No. 2.

(Exhibits handed in.)

I produce the minutes of the Court opened on 13th January, 1889. I shew information filed. A motion was made by Mr. Clutsam, attorney for defence, that the murder case be postponed for a week, which was granted.

No. 2 information was tried before No. 1. The affray case was tried on 17th. The jury in that case were Samuel C. Smith, Edward L. Bode, Robert Henry Smith, James Beecham Saunders, George R. George, Ernest R. T.

Macpherson, George U. Higgs, H. Theodore Knowles, Charles M. Mather, Albert North, Charles Perpall, Joseph Cambridge.

The witnesses for the Crown sworn by me were C. A. Demeritt, Robert Kelly, Ida Stevens, E. J. Fernandez (10 in all).

The witnesses for defence were George Lee, Anthony Roberts, Nathaniel Elliott.

Mr. Clutsam defended.

The Attorney General opened the case for the Crown. He made *three addresses to the jury*. One opening, one after closing his evidence, and one in reply. The jury retired and deliberated about eight or ten minutes.—Verdict, "Not Guilty."

The Court was packed with spectators, and there was much applause.

The murder case, Information No. 1, was tried on the 29th, it having been set down for the 22nd January.

The jury were :

(The names given.)

The names of the witnesses, seventeen examined for Crown, and two for defence, Frank Allen Sands and Albert Bethel, both had been defendants in the affray case. The verdict *Manslaughter*.

The Attorney General *conducted the case for Crown and made three addresses—opening, closing case, and in reply*. Mr. Clutsam defended.

Nathaniel Elliott, a witness for the defence in affray case, was examined for the *Crown* in murder case.

The prisoner Depaine was sentenced on 5th February. The Chief Justice said he did not approve the verdict, that it was contrary to the evidence and the directions of the Court.

I produce the *minute book* of the Chief Justice. *It is not his private book, but forms part of the Record of the Court.*

I refer to entry Thursday, 17th January, 1889, and in Chief Justice's handwriting, Reg. v. Sands et al., *affray—arraigned—pleaded not guilty*.

Attorney General at opening said, "it was a *serious offence*, fighting in "the highway on *Sunday morning*. *They set upon a man on Eastern Parade, "beat him and left him on the ground. Then happened a more serious case, "come next week."* Attorney General *wishes to keep this case separate from more serious case. Case of Crown closes.*

Attorney General to jury says, "affray established, *case nothing to do with "murder of Gay. Another man in crowd committed that offence. You have "nothing to do with that."*

(Further, see minute Book fyled.)

Mr. Rae (acting Attorney General) *objects to this evidence being brought forward, says that Chief Justice should give evidence of the minute book and not the Clerk of the Court.*

The Chief Justice contends that this is not the case, and that the interruption of Mr. Rae is unseemly.

The Governor argues that the contents of the minute book being mere opinions are not admissible.

After some discussion the Chief Justice is allowed to proceed.

(Note. By the common law of England an entry in any record, official book or register kept in the British dominions, at sea, or in a foreign country made at proper time by any person in the discharge of any duty imposed upon him by law is admissible in evidence of the facts to which it relates, see p. 87, par. 62, Manual.)

Clutsam to jury says: "*Affray nothing to do with murder case, and no evidence to connect prisoners with affray. The witnesses gave different evidence before Coroner and Magistrate to what they gave here.*"

(Certified copies of minute book handed in to Clerk of Council.)

Duncombe cross-examined by Attorney General.

Says nine witnesses examined before Coroner, including the medical men, in the affray case, five before the Police Magistrate in murder case. Seventeen witnesses for the Crown were examined in the affray case before General Court—5 more than appeared before Police Magistrate.

In the affray case (information), Josiah Kelly, a witness before the General Court, was not examined in the Police Court. The following witnesses were not entered on the information for the affray, but were on trial of the murder: James Moxey, Alfred Kelly, Nathaniel Elliott Geo. Colebrooke, Dr. Robinson, Dr. Holmes, James Williams.

The depositions are passed to the Attorney General; after the conclusion of the case they are given in custody of clerk of the Court. The proceedings before the Coroner are sent to the Attorney General.

The dying declaration of Gay was lodged with me on the day it was taken by the Magistrate. I am not prepared to swear to the correctness of the observations entered in the Chief Justice's minute book. In my opinion it would take about three minutes to speak the subject matter shown in that book, as a matter of fact you spoke about thirty minutes. The same observation applies to other two addresses, you said a great deal more than appears in the minute book.

(The Chief Justice observes that the minute book is not supposed to contain all that the Attorney General said, but the gist of it. The murder case was adjourned in consequence of illness of Chief Justice.)

(The Attorney General asks the Council to compare the extracts of minute book with the book.)

I have never known the depositions to be sent to Chief Justice before the trial of the case.

The Chief Justice asks that a commission to take evidence of persons who are not in the Colony may be granted.

The Governor says they have not the power to grant such a commission.

The Chief Justice asks that this may be noted in the minutes of proceedings, as the persons whose evidence he wishes taken were present in Court during the trial.

The Governor objects to the expense of such a Commission.

The Chief Justice reads a letter from Mr. Gibbs, of Ottawa, one of those present at the trial, whose evidence he wishes taken. It was to the effect that the affray trial was a farce, and that the Attorney General did not desire to obtain a verdict. (Letter 29th April, 1889, produced and handed in.) He asks if he is to understand that the application is overruled.

The Governor--No. It is under consideration.

The Attorney General opposes this application.

The Governor agrees with the Attorney General on the ground that the *witnesses will only give opinions and not evidence* of facts.

The Chief Justice replies that the Council have no right to assume that the persons referred to will *only give opinions, not facts*.

Second witness, G. C. Camplejohn, *sworn* (looks at papers): These documents are the records of the inquisition held by me as Coroner on 11th December, 1888. James H. Thompson was one of the witnesses examined before me; he said: "I saw three men beating Gay, Jeff Depaine was one, and there were *two white men*, but I cannot say who they were. Three other young men were standing around. This was near the Eastern Parade. I cleared them off Gay; they went into a yard and then turned round and went westerly. I walked slowly. All at once I heard Gay squalling. He cried out, 'Oh Lord, James, I am cut!' I immediately turned back and went to the man Gay. Gay was in the sea. I do not know how he got there; the sea is near the street, but it was below the Parade. We are strangers here and don't know the place. I saw Gay's entrails hanging out from his belly."

James Moxey was another witness examined before me; he said: "I saw somebody, I don't know who, as their back was turned towards me, hand something to Jeff. I cannot say what it was; the person I think was a colored man. Jeff put out his hand and took something from the young man. Jeff

then made a cut at Gay's side, a sort of sweep, and I heard Gay cry out, 'Oh James, I am cut.'" I drew the attention of the Coroner's Jury to the facts, and expressed my opinion that the deed was committed by the man Jeff. I think I might have told the Jury that there was no evidence to criminate the other parties mentioned. The other parties referred to were mentioned in a rider at the request of the jury, placing on record their censure of the culpable conduct and proceedings of Frank Allen Sands, Albert Bethel, Louis Knowles, William Dunshee and George Henry Lee, who from the evidence although not criminally yet were morally guilty, as being accessories before the fact, of the fatal issue, the murder of Gay.

That was the expression of the feeling of the Jury put into language by me. It conveyed my opinion too. The accessories before the fact were the five persons referred to in the rider. They were liable to be indicted with the principal, or subsequently. I am Judge of the Court of Common Pleas and an Attorney of the General Court. I was not present at the affray trial on 17th January, 1889.

The Attorney General no cross examination.

Third witness — Clutsam, duly sworn :

I was counsel for the defence on the trial of Frank Allen Sands and others for affray, and also in the murder trial of Depaine. I moved to put off the murder case against Depaine, which was the first case on the list. I did so because I required time to look into it, although I had been engaged on it a long time. This case was put down for the 22nd. On the 17th I was counsel for the defence of Sands, Knowles and others in the affray case. The Attorney General opened the case as usual. I cannot say whether he said the charge was heinous or serious. I recollect nothing he said. I believe that he said a more serious offence would come after. I do not recollect whether he said that the case of affray had nothing to do with the murder case, but I said so to the jury. I don't recollect that the Attorney General said that he wished the affray case kept separate from the murder case, but I said so myself. In my opinion, the affray case had nothing to do with the murder. I told the jury that they had nothing to do with anything that occurred after the affray. I intended to defend in the murder case. I contended before the jury that there was nothing to connect them with the affray, there being no evidence of strife or terror proved by the Crown, which signally failed in that respect, although it had been proved in the Police Court. I cross examined witnesses in the Police Court, both in the affray and murder case. I heard the evidence of Charles A. Demeritt there. I cross-examined him. He gave evidence in the affray case—I think the first witness for the

Crown. Demeritt did not give the same evidence in the affray case in the General Court as he did in the Police Court in the same case. I told the jury not to believe a word he said. I do not think that the Attorney General prevented Demeritt telling all he knew. I *did not hear* the Attorney General interrupt or *check Demeritt in giving his evidence by saying*, "I don't want that," or anything of that kind. I *did not hear him check any other witnesses : if he had said so, I think I must have heard him.*

The Attorney General *addressed the jury three times.*

I examined three witnesses for the defence in affray case : *Nathaniel Elliott, Anthony Roberts and George Ford.*

I cannot recollect anything the Attorney General said about my defence.

I did not hear him reflect upon the evidence of the Crown by saying that they were guilty of perjury, or anything of that sort.

I did not hear the Attorney General say that he believed Nathaniel Elliott because he was a respectable man. I call Nathaniel Elliott a very important witness for the defence. The prisoners were all acquitted. I think the jury were about twenty minutes deliberating. The Court was crowded. The defendants were honestly and fairly acquitted. There was great applause in Court. Everybody was perfectly satisfied. Two of the defendants acquitted of the affray were witnesses for defence in the murder case: Sands and Bethel.

I remember that on the murder case several of the jury who had tried the affray case came forward to offer themselves—it was singular. The Court challenged them, and they did not sit. I remember one, Alfred Goney, who informed the Court that he could not find a prisoner guilty of murder. I remember Charlton E. Perpall was foreman of the jury that sat on the affray trial, and was set aside on the murder case. So were Macpherson, Saunders, Knowles, Samuel Smith, George Smith. The Attorney General did not object to any of these men sitting on the murder case. I do not see how he could object; the panel was exhausted and a tally was called; two found. *Pyfrom*, one of them, objected that he had already formed his opinion; the Court ordered him to sit.

James Austin Thompson was foreman. I have lived here the greater portion of my life, and I have been practicing at the Bar for twenty years. I don't know whether any of the jury in the affray case are connected.

I know *T. A. Thompson, the Magistrate, is absent from the Colony; he investigated the affray and murder case.*

Cross-examined by Attorney General :—

There was no difference in your manner conducting the affray case to

any other case. I have had more criminal practice in connection with you than any other member of the Bar. I was present in the Police Court, but called more witnesses than were examined in the affray case. I remember a witness called Josiah Kelly that you called, who was not examined in Police Court. The evidence given in General Court was stronger than that before Police Court.

When the jury was called in the murder case, the prisoner was prevented from exercising his privilege of challenge because the jury was ordered to stand aside by the Court.

I made a note of this with a view to appeal in case of a verdict for murder. When I said that you did not object to any of the jurors, I mean that you had no opportunity, owing to the prompt action of the Chief Justice.

(Note.—The value of the evidence of the witness Clutsam was much impaired by the evident anxiety to speak in favor of the Attorney General.

He was not satisfied with replying to questions asked, but added other matter invariably in favor of the Attorney General.)

(Note by Major Ellis.)

(Note again—Memo.)

The Counsel for the defence states in his defence exactly what the prosecution did. He finds that he can't do better for his clients than follow the lead of the Attorney General.

17th May, 1889.

Farrington absent.

Governor reads portion of letter from Secretary of State: "Bahamas, (Confidential), 27th March, 1889," on the legal aspect of the case, as far as it refers to the affray case, having been kept separate from the murder case.

Fourth witness, Charles A. Demerett, *sworn*:—My name is Charles Allen Demerett—I was examined before the Coroner and jury concerning the murder of Shadrack Gay on the 9th December last; I was also a witness before T. A. Thompson, Police Magistrate, both in the affray and the murder case. The defendants in affray case were Frank Allen Sands, Louis C. Knowles, Albert Bethel, and William Dunshee. You (Chief Justice) were on the Bench, and the Attorney General prosecuted for the Crown. Mr. Clutsam defended. I was the first witness on that trial for the Crown, and was examined by the Attorney General. I gave the same evidence that I gave in the Police Court. I was *interrupted* and *checked* by the Attorney General several times in giving my evidence. He said, "I don't want this," "I don't want that," when I was examined, when I answered. I wanted to tell more. I

was not annoyed at this. I was a voluntary witness. I am not prepared to say that I was intimidated. After the evidence at the Police Court I was threatened by Tom Sands, one of the brothers of the defendant, Frank Sands.

(This evidence *not entered in the minutes* of the proceedings by the Clerk of Council.) The Attorney General *objects* to this as irrelevant. I have a perfect recollection of the attack on Shadrack Gay. In the murder case I was examined by the Court after Attorney General had finished his examination.

Cross-examined by the Attorney General :—

As far as I can recollect I gave the same evidence in the General Court as I did in the Police Court. On several occasions you said I was exaggerating, and liked to hear myself talk. You said that in your address to the jury. On several occasions, when I offered to speak, you checked me. I believe you said I was to wait till I was asked the question. I cannot say what it was you would not let me say. You asked me certain questions and I answered. I know nothing of the murder case. I saw the first attack on Gay. (His evidence as taken in Police Court is read by Attorney General.) The witness says it is correct, and that he gave the same evidence in the General Court as far as I was questioned.

I was not questioned as far as that. On several occasions you did not question me. One point you did ask was, whether I could identify a man? I don't recollect now on what particular points you failed to examine me. I swore in the General Court that the crowd attacked Gay in front of my mother's house. I also swore that Gay came to the gate and spoke to me about three minutes after the crowd had left. I also swore that Gay and the females went to the eastward, and that I followed them a few minutes after. I swore that I heard the sound of breaking of limbs of trees, and I further swore that when I reached the spot where Gay was, I found him wounded; that spot was just above Eastern Parade. That is all I know about the case, and I swore that in the General Court.

Examined by the Council :—

Two days after the evidence in the Police Court I was offered a bribe. Tom Sands called out, "You white son of a bitch, if you give evidence against my brother, you will have your guts cut out." W. R. Kemp heard this; he also told me not to go eastward as my life had been threatened by one of the Sands. The elder brother Sands said he would do anything for me he could. Tom Sands threatened me as I was leaving the Police Court.

(Note.—This evidence was not entered in the minutes of the proceedings by the Clerk of the Council by direction of the Governor, the former evidence in the examination in chief having been omitted.)

Fifth witness, E. W. T. McPherson, *sworn* :—

My name is Ernest Walter Taylor McPherson: I was on the jury panel in January last, Hilary Term. I was drawn on a jury on the 17th January for trial of Frank Allen Sands and others. The Chief Justice was on the Bench, the Attorney General prosecuted for Crown, Mr. Clutsam defended.

The Attorney General opened case for the Crown, addressed the jury. I was on the front row, close to him. I recollect Charles Mather. Charles Perpall, foreman; Theodore Knowles, L. Saunders, Samuel Smith Cambridge, were on that jury.

When the Attorney General addressed us he said we were to have nothing to do with the murder case. I believe he said that the affray was not a serious or a heinous case. I think his words were that the affray was not a very serious character. He said it was an affray, fighting in the street, or highway. He said it was an affray, BUT not of a serious character. He said five or six men set upon another man and beat him near the Eastern Parade, near Boxing Bay. He said that after the beating they ran away. He said there was an affray committed, but not of a serious nature. He said something more happened afterwards with which we had nothing to do. He said the two cases were separate and distinct; that all we had to settle was the affray case, and that the murder we had nothing to do with. I think he said the murder would be tried by another jury. The first witness was Charles A. Demeritt; he was examined by Attorney General. Once or twice I think the Attorney General told him to be careful what he was saying. When the witness began to make a long talk or rigmarole of it, the Attorney General checked him. He told him to confine his evidence to the affray and what he saw take place.

Mr. Clutsam for defence addressed them twice. The Attorney General also addressed them twice. I think the address of Attorney General and Mr. Clutsam differed in some points. One was as to the distance to which the sounds and cries were heard. I think Demerett was examined by Mr. Clutsam. I heard the speech of Attorney General in reply to the case for the defence. I cannot remember the words. I do not remember him *finding fault with his own witnesses; but I recollect him praising Nathaniel Elliott, a witness for the defence, saying that his evidence was plain and straightforward, and that he knew him to be a respectable man.* The Attorney General said he left the case to the jury as to whether they believed

the evidence of the Crown or that for the defence. He said that if Nathaniel Elliott spoke the truth, then the witnesses for the Crown must have committed perjury. At the same time he said that he thought Nathaniel Elliott's evidence very clear and plain evidence. I am a native of Nassau, and I know most people well. I know J. B. Saunders, one of the jury on the affray case. I cannot say if he is related to Frank Allen Sands, but I have always heard it. *I believe he is a cousin.* I have always heard it so. I know he has always been in the employ of Sands Brothers. *He was so at the time of the trial, and is so now.* I do not know if he is related to the defendant Knowles. I have never heard so. I know Theodore Knowles. I do not know whether he is related to defendant Knowles. The jury gave a verdict in the affray case. We deliberated about twenty minutes to the best of my recollection. The defendants were acquitted. There was a great crowd in the court and outside. I was in the General Court when the murder case was called. My name was called as a juror. I was told by the Court to stand aside, because I had tried the affray case. All who had sat upon the affray were told to stand aside. Perpall, the foreman, married a Miss Kemp. Frank A. Sands married a Miss Farrington, daughter of William Farrington. I do not know if they are related. I do not not know whether Nathaniel Elliott, a witness for the defence, is a relative of William Dunshee, a defendant in affray case.

Cross-examined by Attorney General.

The witness Demeritt did not answer your question in the manner you wanted. What I meant by "rigmarole" was that he made a long story when you wanted a direct answer.

You said that the affray case was not very serious, but that a serious case would come after. I must say that you led us to believe that Elliott's evidence was good evidence, and if we placed confidence in it we must reject the evidence of the Crown. You said that Elliott was not connected with any one in the case. The jury believed Elliott's evidence that caused the defendants to be acquitted. We came to a verdict on Elliott's evidence. The occasion was not the only one I have seen the Court crowded, but that time it was very much crowded.

Examined by Mr. Brown, one of Council.

The Attorney General's charge was that there *had been an affray committed, but not a very serious one*; I mean that before that I thought *it was a serious matter, as one of the persons concerned in the affray had committed a murder.*

By the *separation of the affray from the murder case*, the former became the more serious.

Examined by Colonial Secretary.

Nathaniel Elliott appeared to the jury to be a reliable witness.

Examined by Major Ellis.

I think the jury were influenced by the statement made by Attorney General that Elliott's evidence was good evidence.

Examined by the Governor.

The Jury believed Elliott's evidence because it was given in a straightforward manner.

Sixth witness, Samuel J. Bosfield, *sworn* :—

My name is Samuel J. Bosfield. I was present in the General Court Hilary Term, in January last. I am editor of the *Freeman* newspaper, published here. I was present in Court during the trial of the defendants Sands, Bethel, Knowles and Dunshee, for affray, on the 17th January. I was absent for about half-an-hour between 11 and 12 a. m. and also 2 and 3 p. m., the rest of the trial I was in Court. I reported the trial in my paper of the 22nd January. I heard some of the evidence. I heard Demeritt, James Thompson, Alex. Thompson, Robert Kelly, Josiah Kelly. I also heard the evidence of a woman and part of another. I heard the address of Attorney General opening the case to the jury, and I paid attention to it. In opening the portion of the address that struck me that he said something to this effect : *that he wished to disconnect the affray case from the murder case. I heard him tell the jury that he wished to impress them with the fact that the affray was distinct from the murder, and they were to confine their attention to the affray case.*

I believe Charles Perpall, McPherson, Mather were on that jury. I cannot remember other names just now. I remember Attorney General *stopped* Demeritt once or twice in giving his evidence. My idea was that the Attorney General wanted time, and that the witness was going too fast. *I heard the Attorney General discredit his own witnesses. I noticed that he tried to—*

The Governor interrupts, "*We don't want your opinions, we want facts.*"

The witness continued :

In cross examining *Elliott* he *disparaged* Demeritt by asking the latter if he did not like to hear himself talk. In *charging the jury* the Attorney General also dwelt very much on the evidence of *Elliott*. He contrasted the evidence of his own witnesses with that of *Elliott*. He said that *Elliott* was a man of *high standing* or something of that sort, and that the *gentlemen* of the jury *knew* him, and if they believed him, then the witnesses for the Crown must have perjured themselves, or words to that effect. I saw on the Bench with the Chief Justice on that trial Judge Johnson.

I am aware that Nathaniel Elliott, the witness for the defence, is a brother-in-law of William Dunshee who was on his trial. I know J. B. Saunders who was on the jury ; he is, I believe, related to Frank Allen Sands, one of the Defendants ; he is in charge of one of Sands Bros.' stores.

I was present during the trial of Depaine for murder. I reported the case. (Copies of *Freeman* fyled, 22nd January and February 5th.) I was a witness of the trial, and heard all that I reported. I reported a portion of the Chief Justice's charge to the jury.

(Mr. Ray says "that the papers should be handed to the council,"—this is done. Chief Justice says "that he wants that part referring to his charge to the jury read." This was done by the Clerk of the Council.)

(The reports just read are accurate.) Two of the defendants in the affray case were witnesses for the defence in the murder case, Frank Sands and Albert Bethel, and Nathaniel Elliott, a witness for defence in affray case, was for the Crown in the murder case.

Cross-examined.

Nathaniel Elliott after being examined one day for the Crown in the murder case, next day he was examined for the defence. I know Elliott to be a man of great respectability, he is respected by every one who knows him. I do not recollect that you questioned Demeritt about liking to hear himself talk, followed a remark made by Elliott to the same effect about Demeritt's exaggerated way of speaking. I am slightly acquainted with Demeritt. You left it to the jury to decide whether they believed Elliott or the witnesses for the Crown. I do not write shorthand. I reported that case from memory as I heard it in Court. I have no notes taken in the Court. I took none. Nobody furnished me with that portion of the Chief Justice's remarks that I have reported.

20th May, 1889.

The Governor informs the Chief Justice that he will bring in a Bill in the Legislature to enable Commissions asked for examination of witnesses abroad be granted.

The Chief Justice expresses his acknowledgments.

The Chief Justice asked Mr. Farrington if he is not the uncle of Mrs. Frank Allen Sands. He says he is.

The Chief Justice calls attention to the absence of T. A. Thompson, the magistrate, and James Austin Thompson, who have left the Islands ; they were material witnesses.

The Rev. Elijah Sumner, seventh witness, *sworn* :—

I was not present during the trial of Frank A. Sands, Louis Knowles,

and others, on the 17th January, in the General Court ; but I was present at the murder trial when Depaine was tried.

The Governor objects that the witness knows nothing about the case.

The Chief Justice says that he is not here voluntarily ; that he has come here in compliance with a summons, and that he does not diagnose the witnesses, and does not know what they are going to say.

Cross-examined by the Attorney General :—

I had a conversation with the Chief Justice just after the murder trial. I did not then tell him that I had not been present during the trial of the affray case. I saw him last in connection with this matter this morning. I met Mrs. Austin, the wife of the Chief Justice, on one occasion.

The Chief Justice objects that this is irrelevant. After some discussion, the Council decides to allow cross-examination ; to allow the accused every reasonable latitude.

Cross-examination continued :—

Mrs. Austin said she understood I was present during the trial. I thought the affray and murder was all one thing. In my first conversation with the Chief Justice, I told him that many ministers who were present at the trial had expressed a very adverse opinion as to the conduct of the case, and I suppose the Chief Justice told his wife this, and she suggested that I should come here as a witness. I suppose that both she and the Chief Justice would like to know who were present.

Re-examined by Chief Justice :—

I considered the case as *one matter*. I *regarded the affray* and the *murder* case as *one*.

Examined by Mr. Brown :—

I do not know that I can give any evidence concerning the suppression of evidence by the Attorney General.

In reply to Mr. Farrington, the Chief Justice says that he withdrew the allegation of "suppressing evidence," in writing by letter to the Governor ; but that being requested to withdraw the whole charges against the Attorney General he had declined to do so, and was then ordered to proceed to proof, which he is now doing.

Eighth witness, W. F. Albury, *sworn* :—

I was present in Court for a short time on 17th January last, during the trial of F. A. Sands and others for an affray. I heard the same opened. I heard the address of the Attorney General—the whole of it ; I cannot recollect any particular thing that he said.

(The Governor interrupts, would not allow the Chief Justice to ask the

witness if the Attorney General did not say that the case was not very serious.)

I thought that the case was a feeble one. I heard the Demeritt evidence. I heard the Attorney General's examination. I would not say that the Attorney General interrupted him, but that in some parts he restrained him. He reminded him that the murder case was not being tried. He stopped him because the evidence was irrelevant. He said the affray had nothing to do with the murder.

I am giving the evidence to the best of my recollection. I do not think I heard any other witness for the prosecution. I heard no part of the defence. When *Demeritt wanted to go more into details the Attorney General said the affray case had nothing to do with the murder case. I am a native of the place. I know all the gentlemen of the jury. I know the Attorney General is a native of this Island—he married a Miss Sands, I do not know if she is related in any way with Frank Allen Sands—she may be related but I hardly think so. I know the Knowles who was a juror on affray case; I think he is related to Louis C. Knowles, one of the defendants in affray case. I know J. Beecham Saunders, who was a juror. It is commonly reported that he is related to F. A. Sands; he is in the shop of J. P. Sands, the brother of F. A. Sands. I know Perpall. I know he is very friendly with F. A. Sands, but I do not know whether he is related to him. The only time I was present during the murder trial was when the defendants in the affray case, Sands and Bethel, were examined for the defence of Depaine. I was not there when the jury was empanelled. I heard the Chief Justice examine Sands. I heard the Court reprove Sands for his levity in the box when he was giving his evidence. The Court examined Sands at great length after the cross-examination by the Attorney General. I heard him swear that he was the party attacked, not Depaine; he said, he received a "severe lick." I heard he had also given evidence in the murder case; he admitted that he was struck in the affray. The defence was that they were attacked and not the aggressors. I was not there when the Attorney General examined Nathaniel Elliott. I am connected with the Attorney General by marriage remotely. The Attorney General's wife is my mother's first or second cousin.*

Cross-examined by the Attorney General:—

I never informed the Chief Justice that I was ready to give evidence here for him. I did not want to come. No one ever came to me to ask me to give evidence. I have expressed my opinion openly about the case very freely, and it may perhaps have reached the ears of the Chief Justice. I have never been appointed by anyone on his behalf.

Ninth witness, W. E. Pritchard, *sworn* :—

I was present in General Court during the trial of F. A. Sands and others for affray, but not during the whole time. I was there for a short time on several occasions during the day. I did not hear the opening of the address to the jury. I did not take much notice of the case, but remember hearing Demeritt examined, but I think it was in the murder trial. I did not hear the Attorney General examine Demeritt in the affray case.

I knew some of the jurors in affray case. I was not there when jury were empanelled in the murder case. All I know is that F. A. Sands and others were on trial for affray. I was present when F. A. Sands was examined as a witness for the defence in the murder case. I know him to be the same Sands that was defendant in the affray case. I was not present when Bethel was examined.

The Attorney General declines to cross-examine.

Tenth witness, George U. Higgs, *sworn* :—

I was one of the jury in the affray case when F. A. Sands, Knowles, Bethel and Dunshee were tried. The Attorney General addressed us more than once I think. I cannot recall what he said word for word in opening the case. The substance of what he said was that the charge was one of affray. I do not remember him explaining what he said ; *he said it was not a serious case, or something to that effect. I do not remember whether he said the murder had nothing to do with it. I sat on it as a distinct case from the murder. I looked upon it in that light, that was the impression conveyed to me by the Attorney General in his opening address. During the whole of the trial the Enquiry was limited to the affray.* I think the Attorney General instructed us that a more serious case would follow.

I recollect the examination of the first witness, Demeritt. The Attorney General interrupted him in this way, as far as I remember ; he said : “ Wait a minute, my good man,” when the witness went on speaking instead of confining himself to the answering of the question. The witness went beyond the question asked, and was then checked by the Attorney General. I do not know whether Demeritt was annoyed at being checked. *I was told that the affray case was distinct from the murder case, and I judged it so.* I did not sit on the murder, and I was not there. I heard no part of the case.

The Attorney General declines cross-examination.

The Chief Justice makes a formal application for four witnesses to be subpœnaed to attend from various out-Islands. All are witnesses of the Wesleyan persuasion.

Mr. Rae points out that these witnesses cannot be compelled to attend unless their reasonable expenses be first tendered.

The Chief Justice replies that he has been ordered to produce witnesses, and if such witnesses were not called and heard, then he has not been heard. He knows that they were in Court during the trial of the affray case, and they will say what they heard and saw.

The Governor says he does not think that these witnesses can be summoned by the Council unless affidavits as to what their evidence will be.

The Chief Justice declines to put his hand in his pocket. He says he believes they are material witnesses; but, perhaps, some of the reverend gentlemen he proposes to call for to-morrow may be able to say what these witnesses from the out-Islands may know.

The Attorney General here complains that the Chief Justice has said more than once that he does not know what his witnesses are going to say. He wants to know if everybody who was in Court on the days of those trials is to be called, and he asks that the Chief Justice may formulate the exact charge and specify that part of the evidence which was suppressed. The Chief Justice objects that everything the Attorney General said or did is evidence in the case. Therefore, he asks that the ministers from the out-Islands be summoned.

The Governor again says that the Council is entitled to know what grounds there are for supposing that these ministers knew anything.

The Colonial Secretary asks that the charge may be specified; also, that Chief Justice may not be allowed to continue to call witnesses here whose evidence he does not know beforehand.

He asks if the *Chief Justice* has *withdrawn the charge* of *suppressing* or *withholding evidence*, and points *out the injury done to the public service by his absence from his work*. He protests against the *case, which he calls a pure waste of time*.

The Governor again says that the Chief Justice ought to give his reasons for supposing that the out-Islands witnesses knew anything.

The Chief Justice declines to.

The Governor refers to the expense of the Commission for taking evidence abroad, and asks the Chief Justice if he was willing to bear the expense.

The Chief Justice declines to do so.

The Attorney General again asks that the Council may call upon the Chief Justice to specify the portion of evidence alleged to be *suppressed or withheld*. He reads an *address* commenting on the evidence *already pro-*

duced, and *limiting* the issue to "the *suppression* of evidence." He asks that the Enquiry should be limited to this issue, and that *no evidence* should be produced *concerning his wife's relations to any of the defendants*.

The Chief Justice and Attorney General withdraw. After some discussion by the Council on the question, it was decided that the Chief Justice should be asked by a letter the grounds on which he supposes that the out-Island witnesses can give material evidence.

21st May, 1889.

A letter from Mr. Farrington is read referring to the question asked yesterday by the Chief Justice, stating that in consequence of that question he feels a delicacy in sitting, and therefore begs to be relieved from further attendance.

The Council agrees to relieve Mr. Farrington. The letter written to the Chief Justice in accordance with yesterday's resolution is read. There has been no reply. The Governor says that yesterday the Chief Justice stated that he, the Chief Justice, did not formulate the charge, but possibly the Attorney General did. The Governor says that this seems to throw some imputation upon the Council, and that he proposes to ask the Chief Justice what he means by it.

The Chief Justice and Attorney General come in.

The Attorney General hands in a statement on which he based his application yesterday.

The Governor: "Chief Justice, before proceeding with our business 'to-day, you made an observation yesterday which I think will require some 'explanation. You said that the charge was not your charge, and that 'possibly it was that of the Attorney General."

The Chief Justice denies that he meant any imputation, that what he said was for information, and to know whether the Attorney General had done so. "The Attorney General is a member of the Council, he has frequently attacked me, and interfered with me in the examination of witnesses. I want to know whether he has had anything to do with the framing of the charge. I meant to convey no imputation, and I withdraw the expression."

Eleventh witness, the Rev. Francis Moon, *sworn*:—

I went to the General Court on one or two occasions during the affray trial. I was present when F. A. Sands and the others were on their trial. I heard the evidence of a boy named Lee. The Attorney General was examining him. I stood by the door. I did not sit down. I remained there ten minutes or a quarter of an hour. I heard the examination of the witness Lee. When that was finished I left the Court. I saw my son in

Court, the Rev. F. M. Moon ; he resides at Governour Harbor. I think Mr. Smith was there also. *What struck me during the examination of this witness Lee was, that he should have been taken out of the box and sent into the dock because of his outrageous false swearing.* He admitted that he had sworn to the statement in the Police Court, and he swore to another in the General Court. He gave as his reason that he had been frightened by Mr. Crawford, the Inspector of Police. Mr. Crawford was standing by me, and said he had never spoken to the boy. It was during the examination in chief that he made this statement. That is all I heard of the trial. *The defence it struck me had nothing to do,* because the witness for the Crown *was so much in favor of the defence.* Mr. Clutsam did not need to ask any questions—he asked a few in cross-examination. I think my son was in Court during the whole trial. I believe he was. All the evidence I heard was that of Lee. I heard no addresses.

Cross-examined by Attorney General.

The boy Lee swore that he said what he said in the Police Court because he was afraid of Crawford. I cannot say why he made this statement. It might have been because his attention was called to the difference between the evidence that he had given in the Police Court.

Re-examined by the Chief Justice.

His evidence was all in favor of the defence altogether.

The Rev. Joseph Kewley, before sworn, says that he knew nothing of the case, and was not present during the affray trial.

The Chief Justice says he was misinformed, and regrets having brought Mr. Kewley there.

Twelfth witness, Samuel J. Pinder, *sworn* :—

I was summoned on the *jury* in January last. I attended the Court. I was in Court part of the time during the trial of F. A. Sands and others for affray, from the commencement. I was there about two hours. I heard the opening address of the Attorney General to the jury. I do not recollect anything he said in particular. He said it *was not* an *important* case. He said *that the affray had nothing to do with the murder, and that the jury must keep the case confined to the affray.* He said the affray happened on a Sunday evening. I cannot say the day of the month. I recollect the Sunday. He said it was a *simple misdemeanor*. I won't say that he said it was a case of people fighting in the street. I saw the first witness, C. A. Demeritt, sworn, and heard his evidence. I know him. The Attorney General examined *him very slight, very slight indeed.* *He interrupted him and checked him in his evidence.* He would *not allow*

him to give his evidence straightforward. Demeritt seemed displeased because he was not allowed to give a straightforward statement. I know Demeritt well. I believe him to be a straightforward man. I believe he would not tell a lie. *He behaved in the box like an honest, upright man. He was prevented from telling all he knew. He meant to say more if he had been allowed.* I did not notice the Provost Marshal in Court. I saw another witness examined. I do not know his name. I was there a couple of hours. I heard Demeritt cross-examined by Mr Clutsam for the defence. *If I had been a stranger in Court I should have thought the Attorney General was* DEFENDING INSTEAD OF PROSECUTING.

There was no need of a defence. I was not there when the verdict was returned. I have heard that the defendants were acquitted. *I was not surprised.* I know some of the parties who were on that jury. Theodore Knowles, Beecham Saunders, C. George. I think Knowles on the jury is related to the defendant Knowles. I don't know what relationship. I know that Beecham Saunders is employed by Sands Brothers, one of which company is F. A. Sands, the defendant.

I was called to sit on the murder trial a few days after the affray case. I heard the jury called. I was called. I asked to be excused, because I was a relative of the accused Depaine. His mother was my first cousin. I don't think it right relatives should try relatives. I recollect that, when the jury was called, the Court objected to those who had sat upon the affray trial. Several appeared and were objected to. The Attorney General *did nothing with regard* to challenging jurors and said nothing. He sat still. I believe nearly all the same jury were called and were objected to. I was not in Court during the murder trial. *As soon as I was excused I went off.*

Cross-examined by Attorney General.

As soon as Demeritt began to give his evidence you stopped him and asked him questions. You would say to Demeritt, as he was speaking, "that you did not require that." You meant that you did not require the evidence he was giving; but I cannot remember the particular point. If Demeritt swore that you checked him and asked him to wait till you were ready, I should believe him, because I believe him to be an honest man. *You stopped him from giving his evidence.* I don't recollect what you prevented him from saying. I believe what Demeritt says on oath. He told me different outside to what he told you inside. If he swore that he told all he knew in the General Court I should not know whether to believe him. *I maintain what I said, that if I had been a stranger in Court I should have thought that you were for the the defence.* It was principally

in your mode of *examining Demeritt* and the way you opened the case to the jury that I say that. You said it was a very slight charge. You said it was not a grave charge, or something like that. You said it was not connected with the murder case. In my opinion the two were connected and ought to have been connected. In my opinion the affray defendants should have been indicted for complicity in the murder. You said it was a misdemeanor. I thought from the way you examined the witnesses that there was no need for a defence. I thought so from the way you examined Demeritt. I heard one other witness examined and I left. I don't know how many were examined. I only heard the first part of the case.

As soon as the jurors were called in the murder case and came up, the Chief Justice questioned them, and told those who had sat upon the affray case to stand aside. He objected instantly; he did not wait. He objected as soon as they were called and ordered them to stand aside. I never went to the Chief Justice to tell him I would give evidence. I never spoke to any one. The judge's son came to me the other day, last week, about Friday or Saturday, and asked if I was one of the jury. I replied, yes. That was all he asked. Mrs. Austin asked me the same thing. They came one after the other. She asked if I had been summoned. I said, yes. She told me I might get a subpoena. No one else spoke to me about coming here. That is all she said.

(The Governor told the witness he was not to *laugh there*.)

Thirteenth witness, James Bullard, *sworn* :—

I was summoned on the jury in January Term. I was in Court part of the time of the trial of F. A. Sands and others for affray. I was there when the case was opened. I was obliged to attend because I was summoned. I asked to be excused, but you would not allow it. I heard the Attorney General open for the prosecution and inform the jury of the case. I was not one of that jury. I was in Court standing by the pillar in the court room. I was nearer to the Bench than the audience were. I was close to the Jury-box. I heard what the Attorney General said. He said the charge was an affray; took up a dictionary and gave the meaning of the word. I cannot remember whether he said it was not a serious case, he said it was one of misdemeanor. When the witness Demeritt wanted to *connect* in his evidence the murder with the affray case, the Attorney General said it was a separate case, and that the murder would be tried later another day. Once or twice he stopped Demeritt. (The Governor says it is useless to produce evidence regarding the two cases having been separated, the Imperial Government having already decided that the Attorney General had the right to do it.)

The Attorney General stopped Demeritt in my opinion when he wanted to connect the murder with the affray ; he interrupted him to that extent. I was not there all day. I was in and out. I heard the cross-examination of Demeritt by Mr. Clutsam. I heard more at different times in and out. I heard Lee examined. I know a great many of the men who were jurors in the affray case. I know the defendants in the affray case. Theodore Knowles, one of the jury, was a relation of L. C. Knowles, the defendant. I think they are cousins. Saunders of the jury is not a relative of any of the prisoners, but he is connected in business with Sands, the prisoner. I think he keeps a grog shop for Sands.

I was a juror on the murder case, that was some days after the affray trial. Frank A. Sands and A. Bethel, two of the defendants in the affray case, appeared as witnesses for the *defence* in the murder case. Another witness for the defence in affray case, Nathaniel Elliott, was called for the Crown in the murder case. I did not know at that time that Elliott was related to any of the defendants, but the day after the murder trial I was told by one of the jury that Elliott was the brother-in-law of defendant Dunshee.

Cross-examined by Attorney General.

N. Elliott was examined for the defence in the affray case. I cannot remember whether he was examined for the prosecution or for the defence in the murder trial, but he was examined on one side or the other, and great reliance was placed on his evidence by the Attorney General in one of the cases in addressing the jury—I think in the murder case. The Attorney General said he had known him from his youth ; that he was a man of great reliance, and respected by the community. The Attorney General said, anyhow, that he had known Elliott a long time. I had never known the man till that day when he was called.

22nd May, 1889.

The Governor speaks to the question of limiting the evidence, to the effect that though the gravamen of the charge is the miscarriage of justice, by suppressing or withholding evidence, yet if there is any evidence which may show that such miscarriage was caused by other means, such evidence ought not to be excluded.

Major Ellis speaks in favor of this view.

The Colonial Secretary speaks against it.

Mr. Brown says that in justice to the Chief Justice he thought from the first that the Enquiry ought not to be limited.

Mr. Ambroster concurs, providing nothing more was done than had been hitherto done.

The Governor then speaks upon the point as to whether the Attorney General is entitled to receive in writing a statement of the other points, the charge in the summons being the suppression of evidence.

After some discussion it is agreed that the Attorney General shall be verbally informed that the Enquiry cannot be limited to the charge of suppressing evidence, and if he makes no protest, that then it will not be necessary to give him a statement.

At this point Mr. Sawyer comes in.

The Governor explains what has gone before, and states that if the Enquiry were limited it would be necessary to hold a second Enquiry.

Mr. Sawyer says the Attorney General was only charged with suppression of evidence, and that if any other charges are preferred he ought to be informed.

The Council decides that the Enquiry shall not be limited.

Mr. Sawyer says the Attorney General should be notified if the exact charges be made, but that he thought the Secretary of State had settled the other points.

The Governor replies. He commented upon action of Attorney General in praising Elliott for the defence, saying it was giving away the case.

It is unanimously decided that as questions connected with the conduct of the trial had arisen in the course of the investigation, evidence on these points should not be excluded from the Enquiry. The Chief Justice and Attorney General concur.

The Governor says: "I have to inform the Chief Justice that Mr. Farrington has begged leave to be allowed to withdraw, and that the Council had concurred."

The Chief Justice says that he does not think Mr. Farrington was disqualified, but that he appreciates the fine sense of honor which prompts him to withdraw.

The Governor asks the Attorney General if all the depositions and papers connected with the case were placed in the hands of the Chief Justice before the trial.

The Attorney General answers: "Yes, they were so placed in his hands on the 28th December."

The Chief Justice said: "I did not have them all. I had not the Coroner's Inquisition. I had the others two or three days before."

The Attorney General: "I sent them." He reads what purports to be a memo., dated December 28th, which enumerates documents.

The Governor asks if there was any suppression of papers.

The Chief Justice says there is no allegation of suppression of papers.

I did not receive the Coroner's inquisition, but I make no complaint of it. The preliminary proceedings may be taken as having been perfectly regular. The Governor reads Attorney General the decision of the Council, and says that if, in consequence of their decision, the Attorney General requires time for consideration, the Council will have no objection.

The Attorney General says he is *willing to go on*.

Fourteenth witness, Theodore Knowles, *sworn* :—

I was on the jury panel that January Term. I was one of the jury who tried the case of affray in which Sands and others were defendants. I do not remember the date. I recollect the Attorney General addressing the jury at the opening of the case. He told us what the case was ; he said the charge was affray. He told us what an affray was ; he said it was when persons were armed for the purpose of committing an affray, and putting Her Majesty's subjects in bodily fear. He said the case occurred on Sunday evening in the Eastern part of the town. He did not say it was not a very serious offence. He said it was a serious offence. (The witness here says that he is rather deaf.) I cannot recollect whether he said it was a simple misdemeanor.

The Chief Justice asked : " Did he say that he wished to keep the cases separate ? "

The Governor said this is irrelevant.

The *Attorney General did not put forward any evidence showing the affray terminated in a murder. He did not put in evidence the dying declaration of Gay. He limited our Enquiry to the affray.*

I remember some of the jurors—Perpall, Saunders. I recollect some of the witnesses for the defence, but I do not recollect their names ; if they were mentioned, I should perhaps remember. I recollect one for the Crown, Demeritt. I recollect him because I know him. The others I do not know. I heard in the evidence the Attorney General *find fault with his witnesses* in that they had sworn that they were alarmed before the Magistrate, while in the General Court they swore that they were not alarmed. That was the cause of fault. *I heard him praise one witness for the defence as having given straightforward evidence. I have heard that witness was a joiner. I am related to Louis C. Knowles, one of the defendants on the affray trial. I am his second cousin. I do not think that L. C. Knowles is here now, but I am not certain. I believe that he left the place for Long Island directly after the trial. All the defendants were acquitted. Louis C. Knowles' family live here, but his father is in Long Island for a time. I was called as a*

juror on the murder trial. *Many who sat on the affray case were called on the murder case. They were told by the Court to stand aside. I understood that this was done* because they had sat on the affray case. The Mr. Saunders I have referred to I know by sight, but not to speak to. I don't know whether he is a relative of F. A. Sands.

Cross-examined by the Attorney General:

The only complaint I am aware of was that the women were found fault with for giving evidence different to that which they gave at the Police Court. I did not know it was necessary to inform the Court that I was related to L. C. Knowles, the defendant. It did not influence my decision. I heard jurors in the murder case ordered to stand aside. It was done instantly by the Court as they came up. Each one was told as he came up.

Examined by the Governor:

I am not intimate with Louis C. Knowles, but I know his father well.

Examined by Mr. Brown:

I think the jury *placed most reliance on the* last witness, the joiner. *The man's name was Elliott.*

Examined by Governor: "I am a little deaf."

(Note. The evidence was *read over to him*. This is the *first time this precaution* was taken.)

Fifteenth witness, Hilton C. Albury, *sworn* :—

I was in Court in January last when F. A. Sands and others were tried for affray. The Attorney General appeared for the Crown and Mr. Clutsam for the Defence. I was there when the Court opened. I heard the opening address of the Attorney General to the jury. *He tried to impress on the Court that he was Attorney General, and the grounds he had separated the murder case from the affray. He explained his position as Attorney General.* I heard the examination of C. Demeritt, one of the witnesses examined by the Attorney General. *I was struck that he was not allowed to speak as freely as he wished to. He was interrupted and checked.* Every time he wanted to go ahead the Attorney General said, "Stop, stop, stop," I am not asking you that!" This occurred two or three times. I went away immediately after Demeritt's examination in chief. I did not hear the cross-examination, and did not return to Court. I knew some of the jurors on that trial, nearly all. I am a native of the place. I recollect Knowles, Saunders and Perpall. I have heard that Knowles the juror is related to Knowles the defendant. I know Saunders the juror is very closely related in business to Sands the defendant.

Cross-examined by Attorney General :

I am a shopkeeper. I never informed the Attorney General that I was able to give the evidence. I have never spoken to any of his family. I was particularly careful not to express my opinion in the case in the presence of his son for fear I might be called here. I have never spoken to his wife on the subject.

I cannot say what Demeritt wanted to say. Perhaps the answer he gave was different to that required by the question. Perhaps his reply was irrelevant to the question you put. He would go on to explain. That is the only way you interrupted him. He would go on to explain, and you said, "No, no, that is not what I want." My brother was in Court, but he was not sitting by me ; he had, I suppose, an opportunity of hearing as well as me, if he was there.

Examined by the Governor :—

The Attorney General, in his *opening* address, *did not describe* the case in what would *have been a satisfactory way to me*. *He did it in a feeble way. I cannot remember the terms he used. My idea was that the cases should have been one and indivisible, and that all the defendants should have been arraigned together. It was in that view that I regarded the presentment of the case as feeble.*

His evidence is read over to him (witness).

A letter from the Chief Justice is read to the effect that he cannot state that the witnesses from the out Islands can give material evidence, as he has not been in communication with them.

The Council decides that, under the circumstances, it would not be justified in issuing the subpoenas which would cause great expense.

A letter is directed to be read to Chief Justice, informing him of this and of the fact that he had been told on the 21st instant that the Council waived the condition of the Chief Justice bearing the expense, and that the application is refused simply on the grounds that he cannot state that he believes the witnesses could give material evidence.

25th May, 1889.

The Council met to despatch Commission to take the evidence of Mr. Gibbs, of Ottawa.

28th May, 1889.

In reply to the Governor, the Attorney General says the following are the documents he handed to the Chief Justice on December 28th :—

1. Deposition in Murder Case before Coroner and Magistrate.
2. Depositions in the Affray.
3. Dying deposition of Gay.

Sixteenth witness, William Robinson, M.D., *sworn* :—

I am Resident Surgeon of the Asylum. I was so in December last. Sunday evening, 9th December last, a man named Shadrack Gay was brought in that evening, between 9 and 10 o'clock; he had a very bad wound and was almost in a dying state. He was in a state of collapse about 12 o'clock. *His clothes were torn and saturated with blood, and his bowels were protruding.* The Inspector of Police brought the patient to the Asylum. The *Police Magistrate* came and took the man's dying declaration in my presence. Dr. Holmes was there, Mr. Crawford, and other witnesses. (*The declaration read by Clerk of Council.* Daniel Clarke and Joseph Charles and other witnesses present.) That statement was taken before me. *Shadrack Gay died next morning.* He *complained*, before *dying*, of pains in his shoulders; he complained more of his shoulders than of his wound; he was *bruised about* the shoulder. *The shoulder was swollen; there was a cut on the left forefinger.* There was no symptom of beating beyond [the shoulder; he was all covered with dirt and sand; he was a strong man of from 30 to 35 years of age; he was a powerful man. Dr. Holmes *assisted me in my examination.* *I had the wound half-stitched.* When he came in *he finished it.* The *bruise* on the shoulder *was inflicted* with a dull instrument such as a stick or a man's fist. I was *examined* as a *witness before the Coroner's jury.* I was *not examined* for the *affray* case in the *Police Court before Mr. T. A. Thompson.* *I received a summons to give my evidence* before him, but I *was not examined.* I do not know why I *was not examined.* Mr. Crawford came and told me I was not required. That is as close as I can remember now what he said. I was waiting outside the Police Court. Dr. Holmes was not there. I do not remember his being there. *I was examined in the murder case before Mr. Thompson, it was before the affray case came on there.* I am sure of it.

I recollect the trial in the General Court. I was summoned as a witness in the *murder case only.* I was in Court for a few moments *while the affray case* was going on. I saw F. A. Sands and others being tried standing near the dock. *I was not examined as a witness by the Attorney General in that case.* I was examined as a witness in the murder case when "Jeff" was tried. Dr. Holmes was also examined.

Cross-examined by Attorney General:—

I had no personal knowledge of the facts connected with the affray. The statement which has been read by the Clerk is the only declaration that Shadrack Gay made. I think it was taken about 10.30 p. m.; he died about 5 a. m. next morning. No one asked me to give evidence; but Mrs. Austin,

some days ago, spoke to me about the dispute between the Attorney General and the Chief Justice during the progress of the trial, asking me if I remembered it and who I thought was wrong. She never referred to the enquiry before the Council. She had an interview with me about one and a half hours discussing the trial—not all the time.

(His evidence read over to him.)

Examined by Mr. Brown :

A couple of blows would have caused the swelling of the shoulder, and one person could have done that.

Examined by Major Ellis :

Shadrack Gay told me he had been beaten. I examined him for bruises ; I found none beyond the shoulder ; it became more swollen after death.

By Mr. Brown :

I do not know of any person capable of giving important evidence who was not called at the murder.

Dr. Holmes and myself were not called at the affray trial. . . . I am of opinion that Dr. Holmes and myself ought to have been called. I considered it was all one case. I did not think our evidence was important.

[This was read over to witness.]

Seventeenth witness, Louis N. Duty, *sworn* :

I was a resident justice of these Islands, appointed, I think, in 1880, to Long Island and Rum Cay. I attended the General Court, in January last. I was present when F. A. Sands and others were tried on 17th January for an affray. I saw the jury impannelled. The Attorney General prosecuted for the Crown. I heard him open the case and address the jury. I heard him describe the case. I cannot remember exactly what he said. He told them to disabuse their mind of everything connected with the murder case. I do not recollect his saying that it was not a very serious charge. He said it had nothing to do with the murder case. I knew some of the jurors in that case. Perpall was foreman. Knowles, George and S. Smith were on that jury. I knew all the jury but one man. Beecham Saunders was on the jury. I knew all the accused in these trials—Sands, Knowles, Bethel and Dunshee. I know Knowles at Long Island. I do not know where Knowles, the defendant, comes from, but I think from Rock Island, Eleuthera. I believe the Knowles and the Sands families are related. Knowles, on the jury, told me he was a distant relation of Knowles and Sands, the defendants. I do not know if Beecham Saunders, the jurymen, is related to Sands, the defendant, but he works for him. I was present when Demeritt was examined in that case. He was interrupted by the Attorney General in giving his evidence. While Demeritt

was saying something—I don't know what it was—the Attorney General reminded him that he was giving evidence of the affray. I do not remember William Kelly's evidence. I only remember the evidence of Demeritt and of a man named Thompson, and that of Elliott. I heard the Attorney General making several speeches to the jury. When the jury retired, I left. I heard Mr. Clutsam's defence; he did not say much. (It is a matter of opinion as to whether there was much difference between Mr. Clutsam's address and that of the prosecution.) I know *Nathaniel Elliott*; *he was examined as a witness for the defence*. I remember congratulating *him afterwards on the high opinion the Attorney General held him*. *I heard the Attorney General say to the jury that he had known Elliott from boyhood*; that he was a very respectable man, and that he had no reason to doubt his veracity; he said this when he was addressing the jury; it was that which led me to compliment Elliott afterwards. *Nathaniel Elliott married the sister of William Dunshee, one of the defendants*. *It has been stated to me as a matter of fact that the Attorney General is related to the Sands family*. I know his wife was a Sands. I do not know George Lee, a witness for the defence in the affray case. I know Lee. I do not know George Moxey. I do not think he was examined in the affray case.

Cross-examined by the Attorney General :

I remember your saying that if the jury accepted the evidence of Elliott, who was a respectable man, you left it to the jury to decide whether they accepted his evidence or the evidence of the prosecution. I cannot remember the exact words. You left it to the jury to say whether they believed the evidence of the prosecution or of the defence.

I recollect a case in which a young man named Charles T. Sands was prosecuted for murder. I believe Mr. Johnson prosecuted, but I am not sure; I was not present.

The wife of the Chief Justice has never spoken to me with regard to this case. I do not know the lady at all. The son of the Chief Justice has never spoken to me either; he merely brought me a subpoena. Neither the Chief Justice nor any person of his family has ever approached me on the subject. I have expressed my opinion that the Attorney General as an official had not treated me justly. I have never entertained any ill feeling against you. I am not a resident magistrate. I have resigned my commission. I was not dismissed. I was removed from a higher to a lower position, as I thought unjustly; it was in that your unjust treatment occurred.

Eighteenth witness, George H. George, *sworn* :—

I was in the jury panel of January last, and sworn on the jury of F. A.

Sands and others trial for affray. The Attorney General instructed the jury at the opening of the case. I know all the defendants. The case was opened the same as any other case to my knowledge. I do not recollect anything particular which was said. He examined witnesses for the Crown. I recollect Demeritt and several friends of the murdered man from the out Islands. I think the Attorney General said that the case was distinct from the murder case. *There was no evidence before us of a murder.* Drs. Robinson and Holmes *were not examined.* Nathaniel Elliott was examined for the defence. I did not know at the time of the trial that he was related to any of the defendants, but I have heard since that he was. The dying declaration of Shadrack Gay was not put before us by the Attorney General, and it was not read to us in that trial. The jury acquitted the defendants. I think Mr. Knowles, a juror, is related to the prisoner Knowles. Beecham Saunders is related in business—I cannot say that he is related.

No cross-examination.

The evidence is read to witness.

Chief Justice says that he would like the evidence of T. A. Thompson and James Austin Thompson to be taken. This evidence with that of Mr. Gibbs, of Ottawa, will be all he proposes to offer. The Chief Justice states that James Austin Thompson, he is informed, was present when the man Gay was wounded, and therefore his evidence is important.

The Council adjourns till June 12th, 1889.

11th June, 1889, 1 p.m.

The Court meets.

The Governor states that the Commission to Ottawa has been *returned unexecuted*. One of the judges, Sir Hector Langevin, *had declined to act*; the other, *Judge Taschereau*, was *willing* to act, but Mr. Gibbs was ill and was not *likely* to be in a *condition* to give evidence before he (the judge) would be leaving Ottawa. He returned the Commission.

The Council agrees to continue the Enquiry, adjourns to 10 a.m., 13th June.

13th June, 1889.

Thomas Augustus Thompson, *sworn* (the Magistrate):

I am Circuit and Stipendiary Magistrate. I have been Police Magistrate for seven years. I acted on one occasion as Attorney General. I am the son of Alex. James Thompson, *late Provost Marshal*; he *died in March of this year*. In due course he would have been present in the General Court, Hilary Term last. I took the dying declaration of Shadrack Gay in the Asylum. (The witness looks at the paper and identifies it as the dying

declaration of Gay.) It was a Sunday night the declaration was taken in the presence of those mentioned in it and of the accused. The accused had been arrested by the police—he was the only one in custody. I gave no orders to arrest any one. I did not issue a warrant. I was taking a walk after service, and met some one in the road who told me that a man had been stabbed in the Eastern District. I went to the Police office, saw the Inspector. I met the wounded man being brought in down East Bay Street on a stretcher near the corner of Culmer Street. I went to the Asylum. I wanted to see whether it would be necessary to take the dying declaration. The man died the next morning, and then a regular information was laid before me by the Inspector. An *inquest* was held by the Coroner, the *depositions* were *passed* to me, and I *used them on an investigation*. I got them *from the Clerk of the Crown*, they are those now produced. I used them to see whether I had elicited all the facts. I examined sixteen witnesses. One of them, John A. Thomson; he occupied a house near the Eastern Parade, on the south side of East Bay Street. There are no houses on the other side of East Bay Street at that point. I examined James Moxey, who was also examined before the Coroner. He said something about something having been passed to the accused Depaine (Extracts from the deposition are read.) *Moxey was not examined in the affray case in the Police Court*. I enquired after the Coroner's investigation of Mr. Crawford, the Inspector of Police, if any charge was to be made against the other defendants. He said he had seen the Coroner, and that the Coroner had informed him that the Coroner's jury had acquitted the other defendants. I suggested that he should see the depositions, and next morning a charge of assault and battery was made by Mr. Crawford against the other defendants. The charge was against Sands, Bethel, Knowles and Dunshee for assaulting and beating Shadrack Gay on the night of the 9th of December. A warrant was issued, and these parties were arrested and released on bail in £200 each. They were all young men of about 24 or 25 years of age except Louis Knowles, who was about 17 years old. *After committing Depaine I communicated with the Attorney General, forwarding him the depositions, and wrote to him with reference to the case against the men charged with assault.* (The letter is read.) It was to the effect that Gay being *dead*, a charge of assault and battery could not be against Sands and others, and I asked if the charge should not be for riot and affray. *I do not think the Attorney General answered that letter. I think I went over and consulted him, and he agreed with me.*

I then *advised* the Inspector to institute a charge of riot and *affray* for that of assault and battery. *He went to see the Attorney General, and*

on the morning of the 18th December he withdrew the charge of assault and laid one of affray instead. The charge is in the words of legal authorities and phrasology. I worded it. On the 18th, four men had appeared to answer the first charge; they were formally discharged and then re-arrested on the second charge. *The papers now handed to me are the depositions taken by me against the four men. The Inspector of Police prosecuted.* I examined the witnesses—that is, all that were called by the prosecution. Demeritt, Stephens, Lee, James H. Thompson and Alex. Thompson. The Inspector gave the names to me. *I did not examine James Moxey, Dr. Robinson or Dr. Holmes. I do not think Dr. Robinson or Dr. Holmes were summoned. No subpoena could issue from my office without my authority.* I have to sign them when I am sitting. *I say positively that Drs. Robinson and Holmes were not summoned. I did not think it necessary.* They were examined in the murder case. *All these papers, exhibits 4, 6, 7, and 8, refer to the same events, viz., the murder of Gay and the affray which occurred on the night of 9th of December. I think he must have been stabbed between 8 and 9 p.m. I do not think it was 9 o'clock when I met Gay being taken to the Asylum. I believe that Mr. James Austin Thompson was in the locality in which the murder was committed. I met him walking by the bier—I think he was helping to carry the wounded man. Cross-examined by the Attorney General. I examined every witness that was called by the Inspector for the prosecution of Depaine for murder. There was one witness I wished to call, his name was Josiah Kelly.*

I think I *brought you the letter marked 18. I consulted you throughout. I have no doubt that the charge of riot and affray was the proper charge to prefer against the four defendants. I had several interviews with you. When I concluded the murder case, I investigated the affray case. The witnesses brought forward for the prosecution were sufficient to establish a prima facie case, and I committed the defendants for trial. I took the evidence with great care, and endeavored to elicit the full particulars of the matter in both cases. I was present in the General Court during part of the trial for affray when the murder case came on. I was on circuit. While I was in Court I had an opportunity of observing what was going on. I was there when two witnesses were examined, and I saw nothing different to the ordinary conduct of the case. I was not there when the addresses were made. I remember the name of one witness, Nathaniel Elliott, who was examined before me in the murder case. I was much impressed with his evidence. I thought it very important. I think I spoke to you about it. It impressed me favorably; he gave his*

evidence *carefully and intelligently. I know nothing of the man personally.* Elliott's evidence was important authority that the man Gay had not been altogether blameless, and that his friends were also not free from blame *I have acted for you on one occasion. I consider it the duty of the prosecuting Attorney General to elicit the truth, no matter whether it is in favor of the prosecution or of the defence. The Attorney General here exercises to a certain extent the functions of a grand jury. His position is very peculiar. It is his duty to lay the whole truth before the Court.* Had Elliott's evidence been such as I heard in the Police Court the Attorney General would have been justified in commending it. If the Attorney General believes the witness to be speaking the truth, he should bring it before the jury on whichever side it should be. In my opinion it is the duty of the Attorney General to bring the *whole* truth before the Court. It is no part of *his* duty to secure a conviction when the evidence does not justify it. I was in Court once or twice, but *I cannot give any opinion as to the way the case was conducted, but while I was there I saw nothing unusual.*

I know Louis A. Duty. I remember that you were Attorney General at the time. I had to examine into certain charges made against him in his capacity of Resident Magistrate. I do not know the editor of "The Freeman."

Examined by Major Ellis :—

Dr. Robinson *may have been summoned to give evidence in the affray case but he was not examined.* My duty was simply to see that a *prima facie* case was established, and to examine such witnesses as were called by the prosecution.

Nathaniel Elliott was a witness for the prosecution in the murder case. His evidence was valuable as showing that the motives alleged of Gay and his companions in going up the street were not true. *He was not an important witness in the affray case for the Crown. His evidence did not justify the acquittal in the affray case,* as two wrongs did not make a right. He did not arrive on the scene until after the assault had taken place.

In answer to the Governor :—

His evidence would have been in perfect harmony with a conviction for affray. I did not hear his evidence in the General Court in either case.

Re-examined by the Chief Justice.

Elliott said that when he got opposite John H. Thompson's house, he found Jeff, one Lee, and the man that had been in front of us outside in the street. Sands, Bethel and Dunshee were in Thompson yard, and Thompson was ordering them out. Jeff showed me a cut on his head. This showed that Elliott

had come up when the affray was over. I did not know *that there* was any *relationship between Elliott and Dunshee*. Had I *known* this I should *not have attached so much importance to his evidence*, as relationship naturally has *some effect*. It would be correct to say that if Nathaniel Elliott spoke the truth, then the witnesses for the Crown must have committed perjury, but with regard to the points only that Gay and his companions followed the defendants with retaliatory intention.

Twentieth witness, James Austin Thompson, *sworn* :—

I was on the jury panel in Hilary Term last, and was foreman on the jury on the trial of "Jeff" for murder. I saw Shadrack Gay the night he was wounded; he was brought to the asylum; I assisted in bringing him part of the way. I first saw him lying on the abutment opposite the Eastern Parade. That was between 8 and 9 p.m. He was wounded. I was passing by, and my attention was called by hearing a man say, "he must be dead with his guts cut out." I went across the burying ground and found Shadrack Gay where the fence was down. There was some 10 or 12 people standing up, men and women. I recognized some of them. Gay's head was resting on the knees of a man named Thompson, he was a stranger to me. I spoke to Thompson, and asked him if the man was dead. He lowered his head and called him by name, "Shaddie!" He raised one arm, his lips moved, but I could hear nothing. I suggested that an attempt should be made to bring him down, and I assisted. I was not called upon or examined at the Police Court or before the Coroner. I was summoned on the Coroner's jury, but did not serve. Mr. T. A. Thompson, the magistrate, is my nephew. I have no recollection of telling him what I knew. Mr. McDonald was with me, and saw all I did on the night of December the 9th.

Cross-examined by Attorney General :—

I know nothing of the facts of the wounding of Gay, beyond what I have heard. I was in the General Court part of the time during the trial of the affray case. I was there at different times. From what I saw I had no reason to suppose that the case was conducted different from other cases. I cannot remember if I heard the evidence of Elliott for the defence in the affray case. I heard him in the murder case, but I am not prepared to say I heard him in the affray case. His evidence was read over to him.

DEFENCE.

The Attorney General says that he does not want to call witnesses; that nothing has been proved; that *no evidence of suppression of evidence* has been *proved*.

The Governor says that it would be desirable for him to call witnesses if he has any.

Mr. Malcolm calls witnesses.

First witness, Charles W. Mather, *sworn* :—

I have been serving as a juror for five or six years. I remember being summoned as a juror in January last. I served in a case in which Sands, Bethel, Knowles and Dunshee were tried for affray. You (the Attorney General) prosecuted. I did not notice anything different in your conduct in that case. I remember a man named Nathaniel Elliott who was examined in that case for defendants. I believed his evidence. Nothing you said about Elliott influenced me in coming to a verdict. Your address to the jury had no effect on me than if you had not addressed us. I know him to be a trustworthy, reliable man. I have known him for many years. There was nothing in your conduct to lead me to suppose that you did not wish to obtain a verdict. I believe you did wish to secure a verdict.

The Chief Justice declines to cross-examine.

Second witness, Robert H. Smith, *sworn* :—

I have been serving as a juror for many years. I served on case Reg. v. Sands and others for affray. You (Attorney General) prosecuted for the Crown. I did not notice that you acted differently in that case than you have done in other cases. The jury in that case brought in a verdict of acquittal. I was not influenced by what you said. *My reason for acquitting the prisoners is that I did not consider there was sufficient evidence.* I am of opinion that you sought to get a verdict of conviction. I remember a man named Nathaniel Elliott, a witness examined for the defence. Nothing that you said about Elliott influenced me in my verdict. As far as I could see in that case we two witnesses swore alike, and that made me think the evidence was insufficient.

Cross examined by Chief Justice :—

I am here because I was subpoenaed. The Attorney General *sent for me and I went to him to his office. I was alone with him. He talked to me about the case. He said if he required me he would send for me. He sent Mr. Samuel T. Smith to me before I went to his office.*

The dying declaration of Gay was not put in evidence before us. The Attorney General said that Gay's declaration had nothing to do with the case.

Dr. Robinson and Dr. Holmes were not examined.

I knew Nathaniel Elliott for 25 years; he married the sister of William Dunshee, who was on this trial. I know J. Beecham Saunders, who was one

of the jury with me. *He was in the employ of Sands Bros., of which firm F. A. Sands, one of the defendants on his trial, belonged.*

I knew Theodore Knowles who was on that jury. I do not know whether he is a relation of Knowles, the defendant. My name was called on the *murder trial of Jeff, which took place some days after the affray case, Several other jurors who had sat with me on the affray case were called.* We were selected because we had sat on the affray trial. I have known *Nathaniel Elliott for years. About the time of this trial he built a house on Bay street,* I believe the house was commenced before the trial.

Examined by the Governor:—

I heard the addresses of the Attorney General. I do not think there was a want of vigour in his addresses. I do not remember now what he said about Nathaniel Elliott.

Examined by Major Ellis:—

I think the Attorney General made two addresses. I can only remember the first address that he said the affray case was not like an ordinary case and that he said two or three times that the affray case was separate from the murder case altogether.

His evidence was read over to him.

Charles R. Perpall, sworn:—

I have been serving as a juror for the last three years. I served as a juryman in January Term last in the case of Reg. v. Sands and others for affray. You (Attorney General) prosecuted in that case. I noticed no difference between your conduct in that affray case from other cases. You appeared anxious to obtain a conviction. I remember a man named N. Elliott examined for the defence in that case. I remember you referred to him in your address to the jury. I remember that you said something to the effect that you believed him to be a very honest man, and you had never heard anything against his character. The defendants were acquitted. In bringing in my verdict I was not influenced in any way by what you said respecting Elliott. I formed my opinion with regard to the witnesses for the Crown. I did not believe Thompson then or Demeritt; that's what influenced me in arriving at a verdict.

Cross-examined by the Chief Justice:—

I am a client of the Attorney General's, and I always consult him on business. I am not related in any way with the Sands family. I heard the evidence on the affray trial. The dying declaration of Shadrack Gay was not read to us. Doctors Robinson and Holmes were not examined. I did

not know at that time of the trial that Nathaniel Elliott was related to the defendant Dunshee. I know it now; he is a brother-in-law of Dunshee.

My name was called as a juror on the murder trial of "Jeff," about a week after the affray trial. I was told to "stand aside" by the Court, because I had sat on the affray trial.

Evidence read over to him.

Albert North, *sworn*:—

I have been serving here as a juror for many years. I remember sitting as a juror in the case Reg. v. Sands and others for affray. You prosecuted (Attorney General). I heard you open the case and examine the witnesses. As far as I could see, you conducted that case like any others. In my opinion you opened it strongly for a conviction against the defendants as against any others. I remember Nathaniel Elliott being examined in that case. I cannot remember what you said about Elliott. I remember your saying something; what you said about him did not influence me in any way in my verdict. I arrived at a verdict upon the evidence I heard, and that alone.

Cross-examined by Chief Justice:

I know the Attorney General; he deals with us. I am a butcher. I know N. Elliott. I did not know, at time of the trial, that he was a brother of the defendant Dunshee. I know it now. I do not know that he has recently acquired a new shop in Bay street. His trade is a joiner. In the affray case I formed my opinion from the evidence I heard. The dying declaration of Shadrack Gay was not read to us. I do not remember Doctors Robinson and Holmes being examined. I came here because I was subpoenaed this morning. I have not spoken to Samuel T. Smith, nor to the Attorney General, nor to any one, about my evidence. I met Smith on the road this morning and we came here together. I know he was a witness here. I do not know if he is in the employ of Sands Bros.

Evidence read over to him.

Edward L. Bode, *sworn*:—

Examined by Attorney General:

I have been serving as a juror here for about last three years. I served as a juror in January last in case against Sands and others for affray. I heard you conduct the case; I saw nothing different from other cases. I thought you strove pretty hard to obtain a conviction against those defendants. They were acquitted. I remember Elliott being examined. I cannot remember any particular words you used about Elliott. I did not believe the evidence of Thompson. I found the evidence contradictory; that was the reason for

my verdict. I mean the Thompson who came from the Smack. They belong to the out Islands. James H. Thompson I had seen before. I know him well. On Monday after the murder he came and talked about the case.

Evidence objected to by Chief Justice.

Objection maintained

Evidence closed and read over to him.

Samuel T. Smith, *sworn* :—

Examined by Attorney General :

I have been serving as a juror for many years ; served as such in January last in case Sands and others for affray. You prosecuted. I did not notice any difference in your manner in conducting that case. In my belief you pressed strongly for a verdict in that case as in any other. I remember Elliott being examined as a witness. I think he was a witness for the Crown, I think I remember some of your remarks about Elliott. You made some comparisons between the evidence of Elliott and Demeritt. You said that if the evidence of Demeritt was true, then Elliott's evidence was not true ; but if Elliott's evidence was true, Demeritt's was not true. That is as near as I recollect. The defendants were acquitted. In arriving at my verdict I was not influenced by your remarks about Elliott. I heard all the evidence. I heard the investigation in the Police Court. I heard the same witnesses in the General Court when I was a juror. My opinion is that if the evidence had been the same in the General Court as given in the Police Court, I should have been bound by my oath to convict the defendants ; by that I mean that the evidence in the General Court was contradictory, and differed in essential points—that led me to bring in the verdict I did. Only one juror did not concur in the verdict of "not guilty," he was named Cambridge.

I know Louis N. Duty. I have heard him express himself about you. He said that you and Taylor had done him an injury ; that he had no friendly feelings towards you, and that some day he would be even with you and Taylor. This I heard him say more than once.

Cross-examined by Chief Justice :

I am partly employed in purchasing logwood on behalf of the "Lochner," in which Mr. Sands is a stockholder. I think I was employed at the time of the affray trial. I was not in the place of Jeff. "Jeff" was Mr. Sands' outdoor clerk. I weigh wood for him, and I get paid so much per ton for weighing wood.

Examined by the Governor :—

Mr. Sands employed me to weigh wood. I think I was employed during

the *affray case*. I was never employed before by Mr. Sands. It is part of my usual occupation.

Evidence read over.

In reply to the Governor the Attorney General and the Chief Justice both acknowledged that relations between them are very strained ; that they have not spoken for some years. This is in private life only, their official relations having always been conducted with courtesy.

The Attorney General asks leave to put in his statement in writing, and to be given till 10 a. m. on Monday to prepare it.

The Council adjourns till 10 a. m. Monday.

On 25th June, 1889, the Attorney General read his defence, which was filed.

The chief ground was that a prosecuting counsel allowed great discretion, and cannot be impugned except on ground of corruption. He denied that he made any mistakes in the *affray case*. If, for sake of argument, he did, he is not to be arraigned on that account.

Repudiates the accusation brought against him, and feels that his character is safe in the hands of his judges.

Enquiry closes.

POLICE COURT,

17th December, 1888.

SIR,—

I have the honor to enclose the depositions of witnesses taken by me on a charge, against one William Henry Lewis Depaine, of wilful murder. The accused has been committed for trial at the next sittings of the General Court.

You will perceive by the depositions that the man Shadrack Gay who was stabbed by Depaine was, a short time before this, attacked and beaten in the street by a crowd of five or six men and boys, among which crowd was Depaine and also Frank Allen Sands, Lewis P. Knowles, Albert Bethel and William Dunshee. The four parties last mentioned were charged by the Inspector of Police, on the 12th instant, with assaulting and beating Shadrack Gay, under 33rd Sec. 28 Vic. ch. 3; but I have come to the conclusion, as Gay *is dead*, and the sec. declares that the complaint must be by one on behalf of the party aggrieved, that this charge will not lie, and that a charge of riot and assault should be made instead.

I should be obliged if you would, after perusing the evidence, instruct me as to whether I should not express this opinion to the Inspector of Police in order that the charge of assault and battery may be withdrawn and one of riot and assault made against the four parties I have named.

I have the honor to be, sir,

Your most obedient servant,

(Signed), T. A. THOMPSON,
Stip. and Cir. Mag.

The Honble. ATTORNEY GENERAL.

Copy of *ante mortem* statement of Shadrack Gay (the murdered man), taken in Asylum on evening 9th Dec., by T. A. Thompson, Magistrate.

"PUBLIC ASYLUM,

"Dec. 9th, 1888.

"Whereas it has been made to appear to me by the statement of
"William Robinson, Resident Surgeon Superintendent of the new Provi-
"dence Asylum, that Shadrack Gay had received a severe wound with a knife,
"is dangerously ill and not likely to recover; and it appearing that the said
"Shadrack Gay is able and willing to give material information relating to
"the charge made against a certain William Henry Lewis Depaine of
"feloniously and unlawfully wounding him, said Shadrack Gay, with intent to
"murder, I take the following statements under oath at the New Provi-
"dence Asylum, this ninth day of December, eighteen hundred and eighty-
"eight, in the presence of the accused, William Henry Lewis Depaine and of
"Drs. Robinson and Holmes, Hon. W. C. Crawford, Daniel Clarke, Joseph
"Clarke, Samuel A. McGregor, James Rowling, C. A. Bartlett, Raphael
"Racine, Mavor Stirrup, James Collie, Thomas Lightbourne and Danbrey
"Evans.

"Shadrack Gay on his oath saith as follows: 'I don't think I can live.
"I believe that I am dying and cannot recover. I know the man before me,
"it is Jeff. I had just come off from my craft, and was carrying my wife's
"things home. I sat with my wife a while in our house. I left her to go
"on board. I met Jeff and several more. I know their figures but not their
"names. I was standing in the road talking to some of our girls who had
"just come from home. Jeff and the other fellows were playing drunk, and
"they knocked me out of the road and wanted to shove me down. I asked
"what they meant; they all said, "We mean to put hell on you." Jeff didn't

"say so. The other fellows caught hold of me, not Jeff, and they struck me, and tore my clothes all to pieces. I was going to make a blow, and Jeff caught hold of me. I asked, "What have I done to you?" He said, "You want to fight." I said, "No." Jeff said to the other boys, "Let him go, I know who he is." They had hold of me trying to throw me down. They all left me and went up the street. I had to go to my craft along the same way. The fellows said, "You son of a bitch, what you want to-night you will catch." I went on the Bay and called my boys to come up with me. My boys came from their vessel. I walked up first to where Jeff and the fellows were; *they* again got hold of me and began to beat me, and *they* nearly killed me with sticks. I pulled off my boot and struck Jeff, he had my neck between two palings; he cut me with a razor—that is all. I fell in the sea. Jeff said, "I'll kill the son of a bitch,—that one." My friends had come up when he cut me, their names are James Henry Thompson, Alexander Thompson, Josiah Kelly, Albert Kelly; these are my friends, and also George Colebrooke and Roger Moxey.

"My friends came up to defend me. This statement is perfectly true, and is made with the knowledge that I cannot live. That is all."

"Examined by the accused party.

"You told the crowd when they first took hold of me to let me go. You were in the crowd. I went on the Bay, then I met you above the burial place. I came up and said to the crowd, "What have I done that you want to fight me?" You all jumped on and beat me.

"My friends did not come up with sticks afterwards. I don't know. I was bruised so bad I knew nothing. I struck you with my boot after you had my head between the palings and I got away.

"You didn't say, "Shaddie, what are you going to do to me?" After you had beat me you said you had nothing to do with it, and I said, "yes; I know you," and struck you with the boot, and you pulled out the razor and cut me. I know you cut me; you said, "You son of a bitch, I'll kill you."

his
 "(Signed), SHADRACK X GAY."
 mark.

"The above deposition was taken and sworn before me at the Asylum this 9th day of December, 1888, it having been read slowly over to the said Shadrack Gay when signed.

"(Signed), T. A. THOMPSON,
 "Stipendiary and Circuit Magistrate.

"Filed December 10th, 1888.

"(Signed), C. C. DUNCOMBE."

I declined to say anything before the Governor and Council on the evidence I put before them ; but I make some remarks now on the duties of the Attorney General, and comment on the *evidence put before the Governor and Council* when I was summoned before them on the enquiry to show how the Attorney General had "*suppressed evidence* on the trial of the *affray* case."

The *duty* of the Attorney General was *duple, peculiar to the Bahamas*. He *had to exercise* all the *functions of a Grand Jury under a special statute*—to examine all depositions sent to him by the Magistrates and Coroners—to *see* if any one had been guilty of any crime, and upon a *prima facie* case appearing he was to present it for trial before the Court and a Petit Jury in Term by *written Informations, to inform the Court*. This duty was put upon him by the *special statute* referred to, "abolishing the *Grand Jury in the Bahamas*." (Vide my statement to the Governor, where the Act is quoted.) Again, by *another statute* of the Bahamas, 17 Vic., c. 14, the Attorney General is invested with powers to require *further proceedings* by the magistrate if he had reasonable grounds to believe *any other person* was a *principal* or *accessory* to any offence.

In this particular case (the murder of Shadrack Gay) the Attorney General, it was proved, *had all the depositions taken by the Coroner* (Campejohn) in the *inquest* on body of Gay, before him. The Coroner and jury had *found that Frank Allen Sands, Lewis P. Knowles, Albert Bethel, William Dunshee and George Lee* "were *accessories before the fact* (the murder of Gay), *that they were 'morally' but not 'legally' guilty.*" What the Coroner *wrote down* was *nonsense* ; he *had misdirected the jury*. "*Accessories before the fact*" to a felony, whether at *Common Law* or by *statute*, are *deemed guilty* of felony, *and may be indicted with the principal*, or for a *substantive felony* ; *but with this finding and inquest before him the Attorney General did nothing to rectify the proceedings* of the Coroner, or order further proceedings against others ; but *directed the magistrate* (Thompson) to *proceed against Sands and the others as for a simple misdemeanor* ; in fact, he ratified and approved by his subsequent conduct the acts and doings of the Coroner.

The Attorney General was *not bound* by the *proceedings* of the Coroner or magistrate. The Attorney General had next to *frame the Informations* ; he did so. The *first Information framed* by him and placed before the Court upon the Calendar was for *murder* against *Depaine* for the *murder* of Shadrack Gay on the 10th of December, 1888.

The *second Information prepared* by the Attorney General and put upon the Calendar was an *Information for an affray* against Frank Allen Sands

Lewis P. Knowles, Albert Bethel and William Dunshee, committed on the 9th of December, 1888, the same month.

The Attorney General had to support these Informations with proofs before Court and Petit Jury. How he *framed these Informations with the ante-mortem statement of the murdered man, Shadrack Gay, before him, and the proceedings* and evidence before the Coroner, I cannot explain.

Why he alleged the murder of Gay to have occurred on the 10th of December and the affray to have occurred on the 9th of December, I cannot explain. I was specially summoned before the Court of Enquiry (a novel proceeding against a Chief Justice) "to adduce such facts as I might be possessed of to show that the Attorney General had suppressed facts in the affray case, causing a miscarriage of justice." I was summoned to prove what I had specially withdrawn from my report or statement at request of Lord Knutsford for the reasons given in my letters to the Governor. I did what I was called upon to do by the Court of Enquiry. I gave the whole of the Records and proceedings before my Court *upon which I had formed my opinion*. I put before them the *original minutes* of the Court; the "minute books" of the Judge and the Clerk of the Crown; the *Informations prepared and fyled by the Attorney General, the Calendar prepared by him for the Term, all the depositions and proceedings before the Coroner and magistrate, with the ante-mortem deposition of the murdered man (Gay) (the same papers which the Attorney General had used and framed his Information upon), the originals and also office copies of all such depositions and proceedings and the minutes to send to the Colonial office.* The Clerk of the Crown (Mr. Duncombe) produced all these records and proceedings - the custodian of such, and he *left them* in the hands of the Governor and Council (the Court of Enquiry).

The "Minute-Book" of the Judge, marked "General Court, Criminal Jurisdiction" (which the Judge is bound by law to keep), *contained the minutes of the trial of the affray case against Sands and others, and also the murder case against Depaine.*

The Minute-Book was in my handwriting. The entry appearing therein as the *first case brought in for trial* that Hilary Term by the Attorney General was the second case (No. 2) *on the Calendar*, 17th January, 1889 :

THE QUEEN <i>vs.</i> Frank Allen Sands,	} Affray.
Lewis P. Knowles,	
Albert Bethel,	
William Dunshee.	

The *Information*, as usual, was *signed* by the Attorney General, his own act. The Court had no right to object to it, either in form or substance, or

to prevent his fying it. A *summary of the remarks in the addresses of the Attorney General to the Jury* in the affray case appear in the *Minute-Book*. He stated to the Jury his intention and determination to conduct the affray trial as he did. He brought it on before the murder trial, which stood first in the Calendar, and he formally postponed the murder case for a later day (several days) by arrangement with Mr. Clutsam, the counsel for defense. He told the Jury at the opening that "they had nothing to do with the murder; that their enquiry was to be confined to the affray; that the affray case was not a serious case, but a simple misdemeanor, and that he wished to keep the case separate from the more serious case."

In his closing remarks to the jury, he said: "The evidence of affray is established. I think. Enquiry nothing to do with death of Gay, distinct offence; the offence a distinct one; one of a crowd committed another offence. Magistrate would not have hesitated, if others guilty, of bringing them before you. You have nothing to do with any case but this case, an affray at Common Law."

He presented this case in so imperfect a way to the jury, and with so little evidence, that the four defendants were acquitted, and there was no evidence given to the jury to enable the Court to direct a prosecution against the defendants for their participation in a felony, which the Court had the discretion to do if it had been brought out by the prosecution that these defendants had participated in a felony.

The defendants were acquitted, and there was, in my opinion, a miscarriage of justice through the conduct of the Attorney General. The murder trial, which was subsequently tried, left no doubt about this on my mind.

The way the Attorney General conducted the Affray Trial was this:— He committed a great error of judgment (if he did not do it by design) in making two cases out of one, and then in postponing the murder case until he had tried the affray case (so called).

All the parties should have been arraigned and informed against by the Attorney General for a murder by the same Information, that was my opinion.

The Attorney General marshalled the evidence in this way, having divided the case into two:—

On the "Affray" Trial he called as witnesses only:—

C. A. Demeritt,	James H. Thompson,
Ida Stevens,	Alex. Thompson.
George Lee,	William Kelly,
John Henry Thompson,	Josiah Kelly,
Euphemia Jane Fernander,	Robert Kelly (10 witnesses).

In the *Murder* Trial he called and produced :—

C. A. Demeritt,	Euphemia Fernander,
Ida Stevens,	Albert Kelly,
George Lee,	Robert Kelly,
James H. Thompson,	Nathaniel Elliott,
Alex. Thompson,	John H. Thompson,
William Kelly,	William Robertson, M.D.,
George Colebrook,	F. A. Holmes, M.D.,
James Moxey,	James Williams (16 witnesses).

A very *important part of the case*, which *was put* before the Governor and Council, was *that Thompson (the magistrate) acted in this case under the direction of the Attorney General*. The *letter produced* by Mr. Thompson when under examination *and his evidence showed this*. So that the Attorney General's remark to the *jury* in his address that the magistrate was responsible for the *form* of the accusation, and the conclusions he came to, do not in any way relieve the Attorney General from responsibility, or for neglecting or omitting to perform his duty. Why did he make this remark to the jury? Was it to cast the responsibility upon the magistrate and relieve himself, or to mislead the jury? One or the other! The Attorney General received twenty-one depositions from the magistrate (Thompson) of his doings and nine from the Coroner, and the *ante-mortem* examination, or deposition, of Shadrack Gay (the murdered man), taken by the same magistrate (Thompson). *All these depositions related to one event, which happened on Sunday evening, the 9th of December, when Gay received the wounds and cuts and bruises which caused his death*. The whole of the twenty-one witnesses knew *more or less of the affray*, but the Attorney General *only produced and examined ten witnesses* on the *affray trial* and *sixteen* upon the *murder trial*. He shifted the *witnesses about*. *Selected witnesses to prove the affray who did not know all about it, and OMITTED to call the most important witnesses*, James Moxey, Dr. Robertson, Dr. Holmes, and Mr. Thompson (the magistrate), to produce the *ante-mortem* deposition of Shadrack Gay and the other persons named in Shadrack Gay's statement, who were present in the Asylum on Sunday night, 9th December, *when Shadrack Gay was brought in wounded and bruised and cut open*. Was it through stupidity that the Attorney General took this course? No, it was intentional; he declared *his intention* to conduct the case in the way he did, in his addresses to the *jury*—(his *intention to keep the affray case separate from the murder case*). He said so in so many words, "*verba fortius accipiuntur contra proferentem*." The duty of the Attorney Gene-

ral, acting as Crown prosecutor, "was not that of a Counsel fighting for a verdict, but a man bound to put before the Court the truth, the whole truth, whether it tended to the advancement of the prosecution or the exculpation of the accused." So well put in the Speech of Sir William Harcourt in the Pigott case, on his charge against Sir Richard Webster, 22nd March, 1889, in the House of Commons.)

James Moxey had sworn before the Coroner (Camplejohn): "I saw Gay was in the street, and I saw the man Jeff; I saw him and two white men; the white men were inside a fence; I saw somebody, I don't know who, as his back was turned towards me, hand something to Jeff; I can't say what it was; the person was a colored man; Jeff then made a cut at Gay's side, a sort of sweep, and I heard Gay cry out, 'Oh, James, I am cut!' I did not see any white man then when Gay was cut; two were inside the fence."

Thus, it is evident that Moxey saw *four* men participating in this affray at the final part of it.

The Attorney General knew of this evidence when he framed the Informations!

Before the magistrate (Thompson), the same man swore:—

"I went up and found Shadrack Gay and *three others* in the street, men whom I had never seen, except Jeff: only Alick Thompson was there of our crowd. Alick Thompson was doing nothing. Shadrack Gay was doing nothing; he was standing near Jeff. I don't know what he had been talking about; then *I saw a man* in the gate *put out his left hand*; he had *on colored clothes*; *his hand went across* Gay; Jeff was near the fence; I saw Jeff make a cut across Gay's belly. *I don't know what was passed*; *but it was immediately after* Gay was cut by Jeff."

When cross-examined by Mr. Clutsam, he said: "*two* persons were in the gate."

Why was this evidence kept back from the jury on the *affray* trial?

No attempt was made by the Attorney General to show *who the "two* persons were *inside the gate,*" nor "*who the colored young man was who handed the cutting instrument to Jeff*" (Depaine).

The Attorney General, in a letter to the Governor of 25th February, 1889, said *three* of the *defendants* were *white*, *two* were *colored*, and *one black*. It was so. Sands and Knowles were white, Jeff (Depaine) and Bethel colored, and Dunshee black.

The Attorney General *knew them, and so described them to the Governor.*

Why was not Dr. Robertson called to prove the *state Gay was in when* brought to the Asylum? or Dr. Holmes, who helped dress the *wounds*?

They could have proved that, *besides* the *large cut* on the *abdomen* (which proved fatal), he *had received other cuts and injuries* on the *shoulder* and *on the hand*. He was covered with dirt and his clothes torn off him, showing the violence he had been subjected to.

Thompson (the magistrate) *was* a good witness, he saw the condition Gay was in. He *took his evidence*. He *ought to have been examined* and have produced the deposition he *took*—(the *ante-mortem* statement).

Why was this evidence kept back by the Attorney General *from the Court and jury on the trial of the affray*?

Why was the *ante-mortem* statement of Gay (taken by Thompson) kept back from the jury? It *was proof of the "affray," it related the whole circumstances*. From Gay's statement *it is evident that the whole thing was one continuing assault which occurred on Sunday evening, the 9th December*. He was harried, worried and beaten in the street and on the ground in the street by *all these men*. They first attacked him opposite Demeritt House, followed him (one hundred yards about) to opposite John H. Thompson's house, near the old burying ground (with dilapidated fences), where the *last and fatal cut* was given by the *hand* of Jeff—one of the others *handing him the weapon*. *All of them participated in the felony; were present, and had assisted in worrying and beating and cutting the man Gay, and reducing him to the state he was in when carried to the hospital in a dying state*.

John H. Thompson swore before Coroner: "I cleared THEM off Gay when he was upon the ground."

At the murder trial of Depaine the same witness swore, in answer to the Court: "I saw the 'men' strike Gay when he was on the ground. I saw the 'prisoner at the Bar (Depaine) striking. I saw others striking; they were 'white men on the ground. It was not far from the place where I found Gay 'on the ground to the place I found Gay cut open. (From minute-book): It 'was opposite James H. Thompson's house that Gay lay on the ground, with 'the men on top of him."

Before the Coroner George Lee swore that when Jeff (Depaine) *made the cut at Gay, Dunshee, Sands and Bethel were inside* John H. Thompson's fence (that was close to the street), and that he *thought he heard Jeff say, "who has the razor?" and Dunshee replied, "I have no razor."* The witness Thompson swore before Coroner that he found *Dunshee, Bethel and Sands* in his yard (the yard was close to the street, open in front). *None of this evidence was produced or elicited by the Attorney General before the Court and jury on the affray trial. It was kept back* (suppressed).

James Moxey's evidence never varied, and it was supported by Ida Stevenson, by E. J. Fernander. Moxey's evidence was taken by the Coroner

at the inquest. Still it does not appear to have made any impression on the Coroner, *and it was kept back* from the Court and jury on the affray trial by the Attorney General. *It was the most important evidence, for it proved that the cutting instrument which killed Gay was handed by another of defendants to "Jeff" (Depaine).*

Now, the *ante-mortem* statement or deposition of Shadrack Gay (the murdered man), which formed part of the *res gestæ* (L. v. Foster, 6 C. & P. 325), was kept back *from the Court and jury* by the Attorney General, contained this. (I have given it at length already.)

Gay swore: "I walked up to where Jeff and the fellows with him were" (that was, to opposite James H. Thompson's house, already mentioned); "they again got hold of me and began to beat me. They nearly killed me with "their sticks. I pulled off my boot and struck Jeff; he had my neck between "two palings, and he cut me with a razor." (This was the second attack upon him opposite James H. Thompson's house.)

This was the *affray as it occurred*.

There was also abundant evidence before Governor and Council that *Demeritt's evidence* had been "*limited*," "*checked*" and *interrupted* purposely by the Attorney General (as I said in my report).

Charles A. Demeritt swore before Council: "I was interrupted and checked "by the Attorney General several times. My evidence was cut short. He said, 'I don't want this,' 'I don't want that,' when I gave my answer. I "wanted to tell more. I am not prepared to swear I was intimidated. Clut-
sam's, Macpherson's, Bosfield's, W. F. Albury's, Pinder's, H. C. Albury's, Per-
"pall's evidence all proved this before enquiry."

Another thing: George Lee (the *defendant "selected" by the Attorney General to give evidence for the Crown*) was, from the 10th of December to the 17th of January, in the employ of Sands Brothers, with the knowledge of Attorney General. He was evidently tampered with, for he *perjured* himself, and when the Attorney General found fault with him at the *murder* trial, he said he had been frightened by the Inspector of Police (Crawford), which was not true.

(The evidence before Enquiry supported the evidence of *minute book* kept by the judge on the affray trial.)

E. W. T. Macpherson, a *juror* on the affray trial; Samuel J. Bosfield, one of the audience in Court; George H. Higgs, another *juror* in the affray case; Samuel J. Pinder, a juror in the Panel for the Term; James Bullard, another juror, and Samuel T. Smith, also Robert H. Smith, *witnesses called* by the Attorney General, *said* the defendants, Sands and others, were

acquitted by them *because there was no evidence* to convict them of the affray. They were jurors who sat upon the affray trial! They decided the case upon the evidence of *Nathaniel Elliott*, a witness for the defence.

Mr. Gibbs, of Ottawa, Canada (Accountant of the Senate), was *present* in Court at the *affray trial*. His evidence, though sent for to Ottawa to be used before the Court of Enquiry, was excluded; but in a letter of his, which I *produced* and *fyled* before the Court of Enquiry, he *said that the affray trial as conducted by the Attorney General was a farce, and that it was difficult to say whether the Attorney General was acting for the defence or prosecution.*

Mr. Gibb's affidavit to this effect was subsequently forwarded to the Secretary of State for the Colonies by Mr. Gibbs himself, and again *by me later* (another affidavit), as a *stranger* in Nassau—his deposition was *very important* evidence.

Samuel F. Pinder, examined before the Governor and Council, said: "I heard the *opening address* of the Attorney General to the jury. *He said it was not* a very important case. He said the *affray had nothing to do with the murder; that the jury must keep this case confined to the affray.* He said "that it happened on a Sunday evening. He said it was a *simple misdemeanor.* I won't say that he said it *was just* a case of fighting in the "street." (This agrees with Minute Book.)

Witness said, "*there was little difference between the prosecution and the defence; if I had been a stranger coming into Court I should have thought the Attorney General was defending instead of prosecuting; Mr. Gibbs said the same thing.*"

The Attorney General *cross-examined* the witness (he only *made it worse* for himself).

Pinder said: "*I maintain what I said, that if I had been a stranger in Court I should have thought you were for the defence; it was principally on your mode of examining Demeritt, and the way you opened the case to the jury.* I say that you said it was a very light charge. You said it was not a "grave charge. You said it *was not connected with the murder.* In my "opinion they were connected. In my opinion the *affray defendants* should "have been indicted for *complicity in murder.* You said it was a misdemeanor."

Another witness before the Governor and Council, *Hilton C. Albury*, when *questioned by the Governor*, said: "The Attorney General did not "describe the case in a satisfactory way to me. He *did it* in a feeble way. "I cannot remember the terms he used. *My idea was that the cases—two cases—should have been one and indivisible, and that all the Defendants*

" *should have been arraigned together. It was in that view I regarded the pre-sentment of the case feeble.*"

The neglect of the Attorney General to *challenge any of nine jurors* when called for the Crown in the *murder case, when he must have known that they were the same men who had sat upon the affray case and acquitted the defendants*, was a peculiar circumstance. *He sat still and said nothing, appeared perfectly unconcerned.* The Court was obliged to perform *what was, his duty* and tell these jurors "*to stand aside.*" Again, he neglected to challenge *those jurors* related to prisoners on the *affray trial*,—namely Theodore Knowles and Beecham Saunders. Of course he *knew all about them, as he was a native of the place* (the Island of New Providence and Nassau). It is difficult to *believe also*, that *he did not know that William Dunshee (one of the defendants he put upon his trial in the affray case) was brother-in-law of Nathaniel Elliott, the witness examined for the defence*; and it is most unusual for Counsel to praise witnesses opposed to them. The Attorney General praised Nathaniel Elliott, and then *impugned the witnesses for the Crown.* He said that, if they *believed Nathaniel Elliott*, the *case of the Crown was gone*—or that the *witnesses of the Crown must be perjured.* (Macpherson's evidence, also Bosfield's evidence.)

This was very extraordinary conduct and produced a bad effect in the Court, and it was giving away the case of the Crown.

It was proved *he did this on the Enquiry*—it was part of the *statement I put before the Governor.* The summary of the Attorney General's addresses to the jury in the affray case *was not denied*—it could not have been with any chance of success. The Court wrote it down as it fell from the lips of the Attorney General and, if necessary, the *evidence of witnesses before the Enquiry confirmed the summary in the Minute-Book in every way.* Why did the Attorney General *endeavour to minimize the gravity of the affray* (which he clearly did in his addresses to jury) when there was before him evidence, and *within his knowledge a human life had been sacrificed in that affray.*

Another consequence of the Attorney General not fying *one* information *against the whole of the six defendants* was, that when some of them were acquitted on the *affray trial*, they appeared as witnesses on the murder trial for their friend and companion Jeff.

Common prudence ought to have led the Attorney General to indict *them all together*—to prevent them serving as *witnesses for each other.*

The evidence of *Mr. Clutsam* (the Counsel for the defendants in the *affray and murder trials*) when taken before the *Enquiry* is important. I had no confidence in him, and was convinced that he *would not tell what*

occurred and support Mr. Malcolm *if he could*; and I was not mistaken. I felt bound to call him, as he *must* be supposed to *have seen and heard exactly all that* took place. When asked a question before the Enquiry, instead of giving a direct answer; he always volunteered something *to support* the Attorney General. He could not *remember anything which occurred that was unfavourable to the Attorney General*. He said, "I don't recollect "whether the Attorney General said to the jury that *the affray* had nothing "to do with the murder case, *but I did so*."

"I don't *remember* whether Attorney General said to the jury that the 'affray case was to be kept separate from the murder case, *but I did so*."

He said that C. A. Demeritt did not give the same evidence in the affray case in the Police Court as he gave in the General Court (that is on the trial before the jury). This was an important *admission* from this witness as it agreed with what the other witnesses swore to, that the Attorney General had *checked and interrupted* him and *not allowed him to state all he knew*. There was *prima facie* proof before the Court of Enquiry also (and the members of the Council, natives of the Islands, *knew well*) that Frank Allen Sands and Phillip Knowles were *connected with the wife of the Attorney General*; and *Sands Bros.*, shopkeepers (of which the said Sands was a partner) were *clients* of the Attorney General. The witnesses called and examined by me before the Council were men of high standing in Nassau, clergymen, merchants, jurors, officers of the Court; all of whom *had been present* in Court in the *affray trial and had heard and seen* what took place. They were the best evidence, and I called them at random. I did not know *what* they would say. The Governor ventured to *reprove me* because *I did not* ascertain in advance what the witnesses *would* say. (See his letter.)

The proofs of the Attorney General's sayings and conduct were most positive legal proofs; "the *summary*" of the Attorney General's *addresses* as they appeared in the "Minutes of the Court" *were proved*; the *very* words he used *were proved*; but the minds of the Court of Enquiry were so prejudiced that they were unable to understand any *evidence opposed* to their own prepossessions. They seemed determined to support the Attorney General, and in their ignorance of law to declare that the Attorney General had the "*discretion to do what he liked*," and that he had conducted the affray case in a legal way. They approved his conduct of the case.

What did the members of this Court know of legal *discretion*? *Legal discretion* is a science not to act arbitrarily according to men's wills and private affections. The antithesis of the "*discretion*" the Attorney General exercised *in this case*.

I have given the *evidence* and the "minutes" of the *Court of Enquiry* kept by Major Ellis with great precision. He differed from the Governor and the others in his findings. He found that it was proved the Attorney General had done all I had stated; but his "minority report" was not sent by the Governor to Lord Knutsford as it should have been. It was most important that Lord Knutsford should have been in possession of this before he formed his opinion.

I now give an *anonymous* letter which was placed under the door of my residence the night before the *Enquiry* closed. I believe it was written by Judge Camplejohn (the Coroner)—one of the parties interested:—

"Take advice of one who knows, who feels for you, who condemns in a great measure the course you have adopted, ask a private interview with the Governor, without loss of time. He is a good man, be prepared to make some concession. You are lost if you go on. Malcolm may get hurt—but you ruined."

"TUESDAY NIGHT.

"Mind, ask for a private interview with the Governor."

On that same day, Thompson (the Magistrate) called at my house at 2 p.m. He had just returned from New York, whither he had only just gone. I had insisted upon his appearance before the *Enquiry*, and the Governor sent for him. He had never called upon me in ten years. He said he came from Government House; that he came to see me in a friendly way—to ask me to withdraw the case against Mr. Malcolm. I told him that I had withdrawn all I intended to withdraw; that I had been grossly insulted by the *Enquiry*; that I would proceed with his examination on the morrow. He then said that I could not prove what I had alleged against Malcolm. He continued:—"You know the Governor's influence at the Colonial Office. You will be ruined." He said much more. On his examination before the *Enquiry* the next morning I proved that he had acted under instructions from the Attorney General in proceeding as he did against Frank Allen Sands and the others for a misdemeanor. (See the evidence and Thompson's letter to the Attorney General, asking for instructions, 18th December, 1888.)

This was a discovery: it showed Mr. Thompson's anxiety to stop the *Enquiry* and his sudden interest in my welfare. I always believed that the Attorney General, the Coroner, and Mr. Thompson were acting in concert, during the investigation of this murder case, to screen Frank Allen Sands and the others. Mr. Thompson admits also in his evidence that he was in constant consultation with the Attorney General about the case. The *Enquiry* closed with the examination of six witnesses by the Attorney General and his defence

in writing. His witnesses proved nothing of consequence—only confirmed what others said. I give a copy of their evidence and the defence. On the 3rd of July I received from the Governor an offensive and libellous letter (which I give at length), informing me of the *decision that they had “arrived at.”*

THE GOVERNOR'S LETTER TO CHIEF JUSTICE ON THE DECISION OF HIMSELF AND HIS COUNCIL ON ENQUIRY.

GOVERNMENT HOUSE,

3rd July, 1889.

SIR,—I have the honor to acquaint you with the decision at which the Governor and Council have arrived, after a long and painstaking investigation of the charges your Honor preferred against the Attorney General, of having wilfully withheld evidence with his knowledge in the criminal case which came before the Court in January last, in which you were the presiding judge.

2. The attention of the Governor and Council could not fail to be drawn to the extraordinary line you adopted in declining to formulate a case, when invited to do so, and in merely asserting in general terms that you would proceed to the proof of all the charges contained in your correspondence on this subject.

The examination of your witnesses had no regard to the order usually observed, or to the bearing of their evidence on the issue in question; and you thought it not unbecoming the situation of your position to state, as you have done, that you summoned your witnesses without any knowledge as to what they had the power to prove. The result for the most part was a mass of vague statement, in which injurious insinuations were sometimes suggested; but you need not be informed that your undertaking to prove your case resulted in lamentable failure.

The only direct attempt you made to show that evidence had been wilfully suppressed was in the case of the man Demeritt, who you stated had been prevented from telling all he knew; and it was established by your own witnesses that the interference of the Attorney General was limited in this man's case to the necessary restraint imposed on his tendency to wander into extraneous matters, and from your seat of observation it is not conceivable that you were unable to appreciate the true nature and purpose of that incident.

The other alleged evidence of suppressing material testimony was the withholding from the trial for affray the dying declaration of the man for whose murder an issue was pending, for which this testimony was legitimately and appropriately reserved.

3. It would have seemed incredible that in such a state of facts that were presumed within your knowledge, you could have been betrayed into the utterance of a criminatory charge, and still more remarkable is the persistence with which you adhered to this groundless allegation, when at the end of four months the opportunity was given you to enable you to retire from your untenable position.

You were indulgently permitted by the Governor and Council to widen the scope of your endeavor, and to impeach generally the management of the case by the Attorney General. In this you also failed to show any evidence of unworthy conduct on that gentleman's part. But had you been successful in establishing your position, in what light would you have been placed by such a result?

You were the authority to control the proceedings of the Court, and if they were open to exception and to the condemnation you have now invoked, when your reasonable interposition might have availed to further the ends of justice, can you reconcile your silence with the upright discharge of the sacred obligations of your high office?

You have something to be thankful for that your accusation was unfounded, and that you had not effectually lent yourself to a miscarriage of justice. The Governor and Council profoundly regret that a gentleman holding your dignified office could have so gravely compromised himself, but their duty commands them to deal with you in the situation in which you have gratuitously placed yourself. They, therefore, pronounce you to be deserving of the severest censure, and this view is a lenient one, where the whole circumstances disclose a case in which a more severe course might have been not unjustly adopted.

I have the honor to be, sir,

Your obedient servant,

(Signed), A. SHEA.

To His Honor CHIEF JUSTICE AUSTIN.

This letter, I consider, shows the *animus* of the Governor.

I merely acknowledged the receipt of the letter.

The Governor's duty was simply to *have made a full report of their* proceedings to the Secretary of State, and to have sent all the records and exhibits which I had put before them with the evidence *in full*. Their

decision *was uncalled for*. The Secretary of State had to *decide upon their report*. "The Court of Enquiry, as *constituted*, was totally incompetent to decide what was a question of law and of *legal procedure*." The *conclusion they would arrive at* "was a *foregone conclusion*." They were Mr. Malcolm's *friends*, sitting in Council for the purpose of trying to clear him and to insult me, or degrade me.

Immediately after this letter to me the Governor left the Colony and proceeded to England, and remained there for some months, and he returned to the Colony at the end of October. I had *received no communication from the Secretary of State in the interval*. I was *never called upon for any explanation, or furnished with a copy of the Governor's report, or with any charge or complaint made against me*. I was *kept in the dark*. I was only made aware by friends in London that the Governor *was there* with his report *sitting on* the case at the Colonial Office, and he returned to the Colony with the *decision* of the Secretary of State, which he had secured before leaving.

On the 29th of October, 1889, I received the following from the Governor:—

(Copy.)

A DESPATCH OF LORD KNUTSFORD.

DOWNING STREET,
30th September, 1889.

BAHAMAS:

(Confidential.)

SIR,—

1. I have the honor to acknowledge the receipt of your confidential despatch of 20th of July last, transmitting copies of the proceedings of the Enquiry held by yourself and the Executive Council into the allegations made by the Chief Justice, that the Attorney General, in a recent criminal trial, had suppressed evidence.

2. Having carefully perused and considered the evidence taken on the Enquiry, I agree in the conclusion arrived at by yourself and the Council, that the Chief Justice has failed to sustain the very serious imputation which he has made against the Attorney General, and in the censure which, in accordance with the opinion of the Executive Council, you conveyed to him.

3. I request that you will communicate to the Chief Justice my concurrence in the conclusions of the Governor and Executive Council, and that

you will inform him that, in my opinion, after what has occurred in this case, and in the case of Thomas Taylor, his further continuance in the office which he holds has become very undesirable in the public interests, and that in order to facilitate his retirement, I am willing to sanction his receiving a special pension, if the Assembly will vote and secure it; but that, failing his consent to such an arrangement, it may become necessary to take a course which on many grounds it is desirable to avoid, and to hold an enquiry as to his fitness for further service. The result of such proceedings might be that he would be compelled to vacate his office without a pension.

Governor

SIR AMBROSE SHEA,

K.C.M.G.

Why was this "confidential" despatch sent to me by the Governor?

I accepted the offer of the Secretary of State to retire on a "special pension." I was disgusted with the treatment I had received, and only awaited the action of the Legislature to *resign* my office. I continued to perform my duties as Chief Justice and President of the Legislative Council up to the 26th April, 1890.

The *Freeman* of Nassau, of November 12, 1889 (writing of the return of the Governor and of the "rumors"), says:—"There have been various rumors relating to the Chief Justiceship. We have it from reliable sources that His Honor Chief Justice Austin is to retire on a special pension to be granted by the Legislature. This is doubtless the outcome of the combination that has been seeking for the removal of a righteous judge who would not prostitute the scarlet robe in the interest of a *clique*, and which reached its culmination by boldly challenging that anomaly in jurisprudence, the Attorney General of the Bahamas, who holds in his mighty person the powers of a Grand Jury over the life and liberty of the Queen's subjects. If the retirement of Chief Justice Austin is the decision of the Imperial authorities on the 'secret' investigation held by the Governor in Council into certain charges rising out of the 'affray and murder' trials of Hilary Term of the General Court, the result of which has been long and anxiously awaited for by the public.

"Whether it was brought about by legal technicalities or by crafty wire-pulling and intrigue, we are safe to say that in the notorious trials for the murder of Shadrack Gay, a peaceful and inoffensive citizen, it is the feeling of a large proportion of the community that justice was miscarried, and the law stands unavenged."

The article concludes thus:—

“Let us hope that the mystification observed in the Government horizon ‘just now are ‘signs of the times’ pointing to the final dissolution of the ‘oligarchy that has so long been a curse to the Colony,’ etc.

The two other newspapers in the Colony said nothing. They were muzzled for the time!—only to *open* upon me *after* I had resigned.

BAHAMAS.

No. 5.

MESSAGE FROM HIS EXCELLENCY THE GOVERNOR TO THE SPEAKER AND MEMBERS OF THE HONORABLE THE HOUSE OF ASSEMBLY.

The Governor has the honor to inform the Honorable House of Assembly that the Right Honorable the Secretary of State for the Colonies deems it expedient that His Honor Chief Justice Austin should be relieved from the duties of his office, and that a suitable pension should be provided for him.

The Chief Justice has expressed his willingness to resign his office when secured in a retiring allowance by Legislative enactment, and the Governor respectfully recommends that the amount of the pension should be fixed at three hundred and fifty pounds per annum.

A Bill proposing to give effect to this arrangement will accordingly be submitted to the Honorable House, and the Governor trusts it may seem wise to that Honorable Body to accord to this measure their favorable consideration.

A. SHEA,
Governor.

GOVERNMENT HOUSE,
NASSAU, N.P.,
25th February, 1890.

A BILL

Granting a retiring allowance to the Honorable Henry William Austin, Chief Justice of these Islands.

WHEREAS Her Majesty's Principal Secretary of State for the Colonies deems it expedient that the Honorable Henry William Austin, Chief Justice of these Islands, should be relieved from the duties of his office upon a suitable pension being provided for him. AND WHEREAS the said Henry William Austin has expressed his willingness to resign his office upon having such pension secured to him by Legislative enactment.

May it, etc.

I. Upon the coming into operation of this Act the office of Chief Justice of these Islands shall become vacant, and the said Henry William Austin shall from thenceforth and during the remainder of his life receive a retiring allowance at the rate of three hundred and fifty pounds per annum, payable out of the Public Treasury of these Islands, by warrant, in the usual manner.

II. This Act shall come into operation on the day on which it is published by the authority of the Governor in the newspaper of the Colony in which Government Notices are published.

This Act was published in *Nassau Guardian* on 25th April, 1889.

NASSAU, 14th April, 1890.

SIR,—

I have seen Sir Augustus Adderley, and have heard from him Lord Knutsford's decision as to the pension.

I understand from him that your Excellency is prepared to accept my resignation as Chief Justice as from the 1st of June next, and I hereby tender my resignation on those terms, with a request that I be furnished with a copy of Lord Knutsford's despatch on the subject.

And I hereby also tender to your Excellency my resignation as President of the Legislative Council of the Bahamas.

I have the honor to be,

Sir,

Your Excellency's

Obedient, humble servant,

H. W. AUSTIN.

His Excellency THE GOVERNOR.

The Governor refused to grant me a copy of Lord Knutsford's despatch, but he wrote me as follows on the same day :—

NASSAU, 14th April, 1890.

SIR,—

I have the honor to inform you that the Right Honorable the Secretary of State for the Colonies, with whom I have communicated on the question of the retiring allowance secured to you by the Act recently passed on your resignation of the office of Chief Justice, has advised me that he considers the proposed pension of three hundred and fifty pounds per annum a liberal one, and I shall be glad to learn at your early convenience whether your Honor adheres to your acceptance of His Lordship's offer conveyed to me in your letter of the 29th of October last.

I have the honor, etc., etc.,

(Signed), A. SHEA.

To His Honor CHIEF JUSTICE AUSTIN.

NASSAU, 14th April, 1890.

SIR,—

In reply to your Excellency's letter of this date I desire to say that as you inform me that Lord Knutsford has now decided that the pension which has been voted by the Legislature at £350 per annum is a "*liberal* one," I consider that I am bound to accept that amount. I, therefore, adhere to the terms of my letter referred to by your Excellency of the 29th of October last; and I desire, further, to say that I am prepared to accept your Excellency's offer conveyed to me this afternoon by Sir Augustus Adderley of full pay up to the 15th of June next, with the permission to retire as soon as the Easter Term of the Court is over.

I have the honor to be,

Sir,

Your obedient servant,

HENRY W. AUSTIN.

To His Excellency THE GOVERNOR.

BAHAMAS.

GOVERNMENT HOUSE,

NASSAU, N.P., 15th April, 1890.

SIR,—

I have the honor to acknowledge the receipt of your letter of yesterday's date, tendering me your resignation of the office of Chief Justice of this Colony, to take effect on the conclusion of this present Term of the Court, which resignation I accept. I beg to inform your Honor that I am quite willing that you should continue to receive the amount of your full salary up to the 15th of June next.

I have the honor, etc.,

(Signed), A. SHEA.

His Honor CHIEF JUSTICE AUSTIN.

THE TAYLOR CASE.

(A CONTEMPT OF COURT CASE.)

THOMAS TAYLOR FLOGGED FOR AN ATTEMPT TO MURDER THE JUDGE
ON THE BENCH.

A DESCRIPTION OF THE SCENE IN COURT.

TRINITY TERM, 1888, BAHAMA ISLANDS.

(From the Nassau *Times*, 28th July, 1888, a local paper.)

“DESPERATE ASSAULT ON HIS HONOR THE CHIEF JUSTICE.—A fearful scene was enacted in the General Court yesterday morning, immediately after the sentence on the prisoner, Thomas Taylor. The door being opened of the dock, he rushed from the dock, seized a policeman's baton, and he flew towards the Bench, ran up the eastern steps and made a most violent attack on the Chief Justice. The first blow was aimed at his head, but the prisoner coming in contact with a screen which was between him and the judge, stumbled and missed his aim. His Honor, however, received the blow on his arm, which was raised in self defence. Taylor made successive attempts to strike His Honor, but was unsuccessful in doing him much injury, as the police and others rushed in and pinioned him. His attempts to escape were most violent, and, in the scuffle, the railing of the witness-box was destroyed, but the prisoner was at last placed in irons and taken to the guard-room.”

JUDGMENT.

BAHAMA ISLANDS.

IN THE GENERAL COURT.

TRINITY TERM.

TUESDAY, 31st July, 1888.

The Court met.

Present :—His Honor

HENRY WILLIAM AUSTIN,

Chief Justice.

In re

Reg. vs. THOMAS TAYLOR,

FOR CONTEMPT OF COURT.

The writ of *Habeas Corpus* addressed to the Keeper of the Nassau Prison, commanding him to produce before this Court, or the Chief Justice, or Judges of this Court, the body of Thomas Taylor, a prisoner in said Nassau Prison; and, in obedience to said writ, the said keeper of said prison having produced the body of the said Thomas Taylor; and the said Thomas Taylor standing now before me in Court, the said Court, by the mouth of the said Chief Justice, makes and pronounces the following judgment or order:—

That the said prisoner, Thomas Taylor, being then a prisoner under sentence in and before the said Court, on the 27th of July, instant, presiding in said Court, the said Chief Justice of the General Court of the Bahama Islands, to wit, Her Majesty the Queen's Superior Court in and for the said Bahama Islands, while sitting on the Bench holding said Court, in open Court did make a murderous assault by attacking the said Chief Justice on the Bench, and did beat and strike the said Chief Justice on his body with a weapon, drawing blood, and did then and there strike other blows aimed at the head and body of the said Chief Justice, the same being, and each of said acts and blows and strikings upon said Chief Justice, or aimed at him, being contempts and a contempt of court, to wit, of the said General Court; to wit, the said General Court of the Bahama Islands, and against Her Majesty the Queen's General Court of the said Bahama Islands, Her Majesty's Superior Court of Justice in our said Bahama Islands.

It is hereby ordered and adjudged that for said contempt of court the said Thomas Taylor be whipped, and do receive within the precincts of the prison walls of the said Nassau Prison, on the 31st day of July, instant, between the hours of four and five of the clock in the afternoon—thirty lashes.

And it is further ordered and adjudged that the said Thomas Taylor be held and kept in penal servitude hereafter for and during the term of his natural life.

MEMO.—The Court had previously pronounced sentence on Thomas Taylor for burglary—(an old offender, an expert thief and burglar, before convicted of five felonies and one burglary)—seven years' penal servitude.

(*Nassau Times*, 1st August, 1888.)

“In accordance with the sentence of the Judge, the prisoner (Thomas Taylor) was flogged yesterday, receiving the number of lashes named (thirty). Taylor now commences his life-long sentence, which he so well merits.”

A LETTER FROM THE ADMINISTRATOR OF THE GOVERNMENT, THE HONBLE. MR. TAYLOR, C.M.G., TO THE CHIEF JUSTICE.

GOVERNMENT HOUSE,

27th July, 1888.

DEAR SIR,—

I have just heard of the dastardly attempt of a prisoner, whom you had just sentenced, to do you bodily injury. I beg to express my regrets at the occurrence, and hope that the injury you have received is not very serious, and that you will soon be restored to health.

Faithfully yours,

(Signed), E. B. A. TAYLOR.

A LETTER FROM HONBLE. MR. SAWYER, MEMBER OF EXECUTIVE COUNCIL.

30th July, 1888.

DEAR CHIEF JUSTICE,—

I congratulate you heartily on your escape from serious, if not fatal, injury from the assault made upon you in Court a few days ago.

I am sincerely glad that nothing worse happened, and that so much good feeling was displayed on your behalf by the persons present in Court on that occasion.

I hear that your son very pluckily rushed to your assistance, and was the first to stop your assailant from carrying out his evident intention to do away with you. I am sure this must have been some gratification in the midst of such an exciting occurrence.

I suppose you will take steps to punish the man as he deserves.

Yours very faithfully,

(Signed), R. H. SAWYER.

I received other letters showing the feeling in the Colony.

CHAMBERS, NASSAU,

1st November, 1888.

Re THOMAS TAYLOR.

DEAR EXCELLENCY,—

Acting on your suggestion, I have written you an official report on the case of Thomas Taylor, for contempt of court, of which I send you the draft.

I also send you a standard work, Blackstone, Vol. 4, which you will please refer to—*pages marked*. You will see by my letter that I *cannot and do not admit* I am wrong in these proceedings, because I think I am *en règle* and supported by standard authorities.

Personally, I should like to see the punishment of penal servitude for life *reduced*, or *remitted* by you, in the exercise of your prerogative; but I see no pressing *necessity for it being done at present, particularly as the prisoner is not suffering in his liberty, but is undergoing a sentence of seven years' penal servitude for the burglary*.

I should have liked to have seen the *case* taken before the Privy Council, for I believe my proceedings are regular and would be confirmed by that Court.

What is much wanted is a Court of Appeals for criminal cases for England and the Colonies.

I shall be happy to receive any further suggestions from your Excellency.

(Signed), HENRY W. AUSTIN.

To His Excellency THE GOVERNOR.

GOVERNMENT HOUSE,

2nd November, 1888.

DEAR CHIEF JUSTICE,—

I have read over your statement, and feel that, while the historical part is no doubt accurately put, it does not in other respects meet the requirements of the case, nor does it conform to the agreement we came to when you favored me with a call on Wednesday last. The Secretary of State will insist on an immediate abrogation of the sentence of life imprisonment in Thomas Taylor's case, and as I am anxious that this shall be done in the way least calculated to weaken the authority of the law, I trust you will yourself make a recommendation to this effect, as was agreed between us when we discussed the matter, and when you expressed your approval of the proposed course and accepted the wisdom of the reasons for its adoption.

Yours faithfully,

(Signed), A. SHEA.

TO HIS HONOR THE CHIEF JUSTICE.

Sir Ambrose Shea, the Governor, was absent when this occurred. After his return on the 3rd of November, I wrote him, stating that there had been a *flagrant* contempt of court committed by Thomas Taylor, a convicted *felon*, and I furnished the Governor with copies of the newspapers published in the Colony, the *Nassau Guardian*, the *Nassau Times*, and the *Freeman*, to show the feeling and opinion of the Press and the public, and I recommended (at the *suggestion* of the Governor, and upon his informing me by a letter that Lord Knutsford "would insist upon it") that the portion of the sentence which ordered the imprisonment of Taylor for life might be *remitted* by the Crown, particularly as Taylor had to undergo a term of *seven* years' imprisonment for the burglary. This recommendation was acted upon *immediately*, but not as I had intended *it* to be done after the *expiration* of the sentence for the burglary.

A notice appeared in the Official Gazette, the *Nassau Guardian*, 6th November, 1888:—"His Excellency, on the recommendation of his Honor the Chief Justice, has been pleased, in the exercise of the Royal Prerogative, to annul so much of the sentence on Thomas Taylor for contempt of court as is involved in the penalty that was imposed of an imprisonment for life."

It will be observed that I never recommended that the sentence be "annulled," but that it might be "remitted or reduced."

On the 29th of November, 1888, I was furnished with a copy of a despatch from the Secretary of State to the Governor, dated 5th November:

"SIR,—

"I have the honor to acknowledge the receipt of your despatch, No. 93, of the 9th of October, and to request that you will inform the Chief Justice that I am advised that the sentence pronounced by him upon Thomas Taylor for contempt of court was contrary to law, and that I have given instructions that the prisoner be discharged on the expiration of the seven years' penal servitude to which he was previously sentenced for burglary, and that should any such grave miscarriage occur again it may have serious consequences for the Chief Justice.

"You will accordingly place it on record that Taylor is to be released as soon as his term of seven years' penal servitude expires.

"I have the honor to be, etc.,

"(Signed), KNUTSFORD.

"To the officer Administering the Government of Bahamas."

It was the Administrator (Mr. Taylor) and Malcolm, the Attorney General (both inimical to me), who reported this case to the Colonial Office; they did so without communicating with me, and the Secretary of State, without *requiring a report from me, proceeded to censure me*, and to declare the sentence I had pronounced "*contrary to law*," and to cancel it, as appears by foregoing letter.

On the 7th of March, 1889, the case was brought before the House of Commons by Mr. H. Fowler, asking the Under Secretary of State (Baron de Worms) whether the Chief Justice of the Bahamas could legally sentence a person to be "*flogged*" for contempt of court, and, if so, under what statute or authority had he the power to pass such a sentence?

Baron de Worms stated what had been done by the Colonial Office—that I had been censured.

The Attorney General (Sir Richard Webster) rose in his place and stated :—

That he had been appealed to by Mr. Pickersgill, and that "he would at once state, although there were old authorities which said corporal punishment might be inflicted in gross cases of contempt of court, he did not think those authorities should be binding in courts in which English law prevailed. In his opinion the Chief Justice acted illegally and in a way not justified by law.

"It appeared, however, from the papers that a murderous attack had been made upon the judge by this particular man. The Attorney General for the Colony said the offence was so serious that it had been intended to indict the man for felony—that is, for the attack on the judge."

On the 16th of March, in the House of Commons, we have, as reported in the *Times*, "*Flogging in the Bahamas.*"

Mr. Pickersgill asked the Attorney General, "whether by the law prevailing in the Bahamas a person convicted upon an indictment for an assault upon a judge could be punished with "*flogging*," and, if so, whether *he would state the authority.*"

The Attorney General said :—

"By section 23 of the Bahamas Stat., 4 William, C. 25, as amended by 63 sec. of Bahama Stat., 28 Vic., C. 3, a person committing a felony after a previous conviction can, upon conviction for such second offence, be whipped.

"The person in question committed such an assault upon the learned judge that it undoubtedly amounted to an attempt to murder; it was under the statute to which I have referred that the Chief Justice purported to order the whipping. As I have already stated in this House, the punishment was, in my opinion, illegal."

I will now explain that it was *not under this Statute* referred to by the Attorney General that the whipping was ordered, although it might have been so. But it was under the common law of England. The "Common Law of England," some of the readers of this paper may not be aware, is the *unwritten* law, or the customary law—the traditionary law of ages; it is to be found treated of in what the Attorney General stated to be "old authorities." I was holding Her Majesty's Courts in Term, sitting on the Criminal side, or Assizes, when this attack upon me was made. It was a murderous attack upon me, an *attempt* to murder me on the Bench.

By the 45 Geo. III., C. 151, the "General Court" (so called) of the Bahamas (in which I was sitting) is constituted a Court of Record, with all the powers, authorities and jurisdiction exercised by the Court of Queen's Bench and other Superior Courts in England. I had the jurisdiction of the Courts in England (the Superior Courts) to punish for contempt, and the punishment was in my discretion.

The usual punishment for contempt as practised in England in recent times has been *fine* and *imprisonment*, or both; *but there is no law or statute prohibiting whipping or corporal punishment*; the only law for the punishment for contempt of court is the *Common Law of England*.

No statute can be found which has *withdrawn* or *which limits the power* of the Courts in question to punish for contempt.

I refer to the law from standard works.

Hawkins, P. C., Chap. 21, on contempts against the King's Courts.—

"However, it is certain that the common law which continues to this day, striking in Westminster Hall, where the King is only present as represented by his judges and by their administration distributing justice to his people, is more penal than any striking in another place in his actual presence, for the latter is not punished with the loss of the hand unless some blood be drawn, nor even with the loss of goods or lands; but if a person draw his sword on any judge in the presence of the Court of King's Bench, Chancery, Common Pleas, Exchequer, or before any Justice of Assize, or *oyer and terminer*, whether he strike, or not, or strike a juror, or any person with or without a weapon, he shall lose his hand, etc., etc."

Blackstone 4, Public Wrongs :

"Therefore, a stroke or a blow in a Court of Justice, whether blood be drawn, or not, or even assaulting a judge sitting in the Court by drawing a weapon, without any blow struck, is punishable with the loss of the right hand, imprisonment for life, and forfeiture of goods and chattels."

* * * * *

"Not only such as are guilty of an actual violence, but of threatening or reproachful words to any judge sitting in Court, are guilty of high misprison, and have been punished with large fines, imprisonment and corporal punishment."

"The power to suppress such contempt by an immediate attachment of the offender results from the first principles of judicial establishment and must be inseparable, attendant upon every Superior Tribunal; accordingly we find it exercised as early as the annals of law exist."

We find in "Blackstone's Commentaries adapted to the Present State of the Law" (a recent work by Kerr)—"Not only such as are guilty of actual violence, but of threatening or reproachful words to any judge *sitting in court*, are guilty of a high misprison, and have been punished with large fines, imprisonment and *corporal* punishment."

There are other authorities which could be cited.

The "misprison" spoken of is "contempt" of court. In law, any high offence under the degree of capital, but nearly bordering thereon, is a "*misprison*."

These authorities were referred to by Cockburn, C. J., in case *Reg. vs. Lefroy*, L. R., 8 Q. B. 139. He said (as reported) :—

"The power to commit for contempt of court is fully gone into in Blackstone and Hawkins. In this case this Superior Court represents the Superior Court of Westminster."

* * * * *

"These Courts were originally carved out of the one Supreme Court, and are all divisions of the *Aula Regis*, where it is said the King in person dispensed justice, and their power of committing for contempt was an emanation of the Royal authority, for any contempt of any court would be a contempt of the Sovereign."

I give now an extract from the Lord Chancellor's (Lord Herschell) speech, when he *introduced* in the House of Lords, in 1886, a new law to *limit* the punishment for contempt of court. It was read only a first time and dropped. He proposed to limit the imprisonment to *three* months, and the fine not to exceed £500. It is reported that the Lord Chancellor said:—"That to deprive the Courts of the power to punish for contempt would be improper and impossible; the judges must have the power of vindicating their authority."

* * * * *

"The jurisdiction in matters of contempt was in its nature a ~~final~~ jurisdiction, and depended much upon the discretion of the judges." /

* * * * *

"The law did not limit the powers of the judge in respect to the infliction of these punishments."

* * * * *

"A jurisdiction of this kind was liable to provoke censure which could not be met by distinguished public servants, they could not vindicate their conduct."

* * * * *

I have said previously that the power to pardon for contempt of court could not be exercised by the Crown.

On the same occasion, in answer to Lord Belmore, the Lord Chancellor said:—

"The Crown has been advised that it had an undoubted right to pardon offences; yet that contempt of court did not come within that power; no authority for the exercise of any such prerogative could be found."

The reason, I say, is obvious, because, as Lord Chief Justice Cockburn remarked in the case cited, *Reg. v. Lefroy*, a contempt of court was a contempt of the Sovereign."

Had I flinched in punishing this man, I might have been obliged to close the Courts of the Colony. I should have been dominated by the criminal classes, or probably attacked again on the Bench. I had no reliable protection.

The position of the judge in an out of the way Colony is so different from what it is in England, where it is surrounded by safeguards of all kinds.

I had to deter others from committing a like offence, and to punish a notorious criminal and a dangerous man to be at large, who had been already convicted of *six* felonies.

The question put in the House of Commons by Mr. H. Fowler on the 7th of March, 1889 (which has already been given) was a simple one.

The Attorney General should not have answered it by giving *only* his own opinion. The answers he made as reported (which I have given) cannot, I pretend, be considered what was required of him on such an occasion. The *censure* pronounced upon me by the Secretary of State was calculated to do injury, and the *publication* of the *despatch conveying the censure* which the Governor made *many* months *after its date*, did further injury *in* the Colony.

My proceedings ordering flogging were not contrary to law, or illegal. The discussion in the House of Commons caused the scandal and not my proceedings.

There was no scandal caused by my proceedings in the Colony—there was a general feeling that justice had been done.

The Secretary of State for the Colonies, by law, has no judicial functions in the Colonies; he has no appellate jurisdiction in the Colonies that I am aware of.

The case in question being an extreme one, and a novel one, might, I think, have been submitted to the Lords of the Privy Council by the Secretary of State before he censured me. It was a fit case to put before the Privy Council for their decision. It was a *quasi* criminal case, and my judgment was final unless set aside by the Privy Council.

On the 3rd May, 1889, the case was again brought before the House of Commons when in Committee on Supplies. Mr. Pickersgill moved for a reduction of the salary of the Secretary of State in order to challenge the decision of Lord Knutsford in this case, declaring that he had not been severe enough upon me.

The Under Secretary of State (Baron de Worms) is reported on that occasion to have defended the action of the Government, and he entered fully into the particulars of the case. He described the attack made by Thomas Taylor on the Court "as a desperate attempt to murder the Chief Justice," and he concluded his remarks by saying "that it was thought it "would be unwise to proceed to such an extreme step as suspension of the "Chief Justice."

Mr. Pickersgill pressed for a division and the Government was sustained. Thus ended this matter in the House of Commons.

Had I been suspended I should have had the advantage of being heard before the Privy Council in support of my judgment.

This is the first opportunity I have had of vindicating my conduct.

Those who may take an interest in this case are invited to examine the old authorities, as well as the more modern ones hereinbefore referred to and quoted.

MONTREAL, Canada, July, A.D. 1891.

ADDRESSES PRESENTED ON MY RETIREMENT.

ST. MARY'S RECTORY, NASSAU,

BAHAMAS, May 21st, 1890.

MY DEAR SIR,—

I have been requested by the clergy and ministers of the several churches and congregations of this City and Island to forward to you the enclosed letter of sympathy and farewell:—

As a comment upon your somewhat sudden and regrettable retirement from the office of Chief Justice, the document is a weighty one, coming as it does from an intelligent body of men who, as pastors of these several congregations, come into daily contact with every condition of life found in your late jurisdiction. Those whose names are appended represent the white, black, and coloured element of our population. They know the feelings of European residents of old Bahamian settlers, of merchants who have most at stake in the community, and of the labouring classes.

Speaking for myself, an Englishman, who has spent twenty-four years in Nassau, and to whom, from long acquaintance, all classes speak unreservedly on matters of general interest; speaking for myself, I can say that I view your departure as a public misfortune, for I hazard the assertion that outside a certain circle of a few bound by blood and marriage, it is impossible to find in this Colony a dozen persons who speak otherwise than with respect and confidence of one who is styled by the masses "the righteous judge."

I remain, my dear sir,

Yours with respect and esteem,

CHARLES WAKEFIELD, B.A.,

Archdeacon.

SIR,—

Your sudden retirement from the office of Chief Justice of the Colony cannot be allowed to pass without our expressing and conveying to you the deep regret that we feel at the loss of your able, impartial and conscientious discharge of the manifold and arduous duties devolving upon you as Chief Justice of this Colony and Judge of all the Superior Courts for the past ten years.

We view your departure with profound sorrow, and as a loss to the Colony of a judge that is upright, fearless and righteous.

You carry with you the esteem and respect and the good wishes of a great majority of those who have had opportunities of estimating your worth.

We earnestly desire for you and yours, health, happiness and abundant prosperity.

!We have the honor to be, sir, yours faithfully,

Signed by Twenty-five Ministers of Religion.

A supplementary address in the same terms.

Signed by *seven* more Ministers of Religion from the Out Islands.

NASSAU, N.P., May 21st, 1890.

SIR,—

Knowing that you are soon to take your departure from amongst us, we take this opportunity of expressing our hearty goodwill, sincere appreciation and earnest sympathy for you.

We view with unfeigned regret your consent to and acceptance of the pension granted you by the Legislature of these Islands, not that we deem it unmerited ; but we look upon the measure with unalloyed suspicion after the perusal of the Message of His Excellency the Governor, dated the 25th of February, 1890, inspired as it claims to be by Her Majesty's Principal Secretary of State for the Colonies, that for reasons of State, an upright, conscientious, and impartial judge, as you have proven yourself to be during your ten years of office in the Bahamas, you have been compelled to suffer for righteousness sake, and because you have done your duty.

Fully alive to your worth as an able and upright judge, we cannot refrain from expressing our unqualified disapprobation of the course of proceedings which has, we believe, driven you to an enforced resignation.

We learn, also, with a feeling of indignation that rumours have been circulated in England with a view to represent you as unpopular amongst

the people, and we take this opportunity of repudiating this as a malicious fiction, contrary to the openly expressed wishes of the people who look upon the whole procedure against you as directly opposed to their interests, as against right, and as not calculated to the better and more impartial administration of justice in the Colony.

You leave us with feelings of our unfeigned respect, not unmingled with alarm for the future for the independence of the Bench in this Colony. We give you the assurance that you possess our cordial esteem, respect and goodwill; and tendering you our best wishes for the future, we trust you and yours may enjoy all the blessings and happiness of life wherever you may reside.

Signed by LOUIS N. DUTY and 112 others.

CHAMBERS, 2nd May, 1890.

MY DEAR SIR,—

I cannot permit your sudden retirement from the Bench of this Colony to pass without expressing and conveying to you the very great and sincere regret I (and I can with perfect truth declare a large majority of the inhabitants) feel at the loss of your able, impartial and conscientious discharge of the multifarious and arduous duties devolving upon you as sole judge of all the Superior Courts therein, and which have been continuously and satisfactorily performed by you for the past ten years.

Upon your retirement you will have the satisfaction of knowing that you take with you the respect, good wishes and esteem of those who had opportunities of judging and estimating your worth, who fervently wish for the future health, happiness and prosperity of yourself and amiable family.

Believe me, my dear sir,

Yours ever faithfully,
(Signed), T. M. MATHEWS, Q.C.

NASSAU, N.P., May 24th, 1890.

SIR,—

As you have ceased to hold the office of Chief Justice of the Bahamas, having received a retiring allowance from the Legislature, and as you will soon be leaving our shores, we cannot allow you to depart without asking you to permit us to express to you our feelings of respect and confidence.

Irreproachable in your private character, and as Chief Justice holding the scales and wielding the sword with a firm and even hand, you have caused the Seat of Justice to be feared, respected and trusted, and tempering severity with equity and mercy, you have secured that it is neither hated nor despised. We are confident that the vast majority of those who have had intercourse with you, or have in any way been observant of your conduct in your high office, feel, with us, that in losing you we are losing an honest man, and a conscientious, fearless and impartial judge.

From our own knowledge we can assure you that by very many, especially by those of the lower and more helpless classes of the community, your memory will be cherished with feelings much deeper than those of mere respect.

We believe that you will carry away with you a mind conscious of its own rectitude, and we assure you of our sincere esteem and our best wishes for your future happiness and prosperity.

(Signed by) M. R. PYFROM,
JOSEPH RORER,
F. BULLARD,
W. F. ALBURY, and 660 others.

NASSAU, May 23rd, 1890.

REVEREND SIR,—

I have to acknowledge the receipt of your letter of yesterday, requesting me to publish a copy of an address which has been presented to the late Chief Justice, signed by the clergy.

Inasmuch as the publication of the address would necessarily be accompanied with comments of my own not in accord with the sentiments expressed in the document in question, I deem it best, after due consideration, to decline very respectfully to permit the address to appear in my paper.

Very faithfully yours,

(Signed,) E. A. MOSELEY.

To the Venerable Archdeacon Wakefield.

24th May, 1890.

MY DEAR JUDGE,—

I enclose a note from the Editor of the Nassau *Guardian*, which speaks for itself. Why can he refuse to print in what claims to be a free paper what is merely a matter of general information? Why need he “accompany

the address with comments of his own" not in accordance with the sentiments expressed in the document? The cause of your persecutors must be pretty bad, if they are afraid for it to be known that you have hosts of friends.

What a pretty pass the Colony has come to when the whole body of ministers of religion are refused a voice in the newspapers. What a country to live in! How do we know who will be the next object of malicious attack, and what protection or justice could any one hope for who has the clique against him?

That article of Wednesday was the most unchristian, ungentlemanly and inhuman production I have ever seen in a public newspaper.

They evidently wish you to leave, *apparently to outsiders*, broken, branded and friendless. Magna est veritas, etc.

Always yours with esteem,

CHAS. C. WAKEFIELD.

THE TIMES ALSO REFUSES.

NASSAU, N.P., 22nd May, 1890.

DEAR SIR,—

I received your note enclosing an address to his Honor the late Chief Justice H. W. Austin, with a request to publish the same; in reply thereto, I beg to say I am unable to do so.

Yours most obediently,

(Signed,) CHARLES H. E. KEMP,

Editor Nassau *Times*.

NASSAU, May 26th, 1890.

SIR,—

Under the present existing state of affairs, with the entire Press of the Colony, as we have reason to believe, under the control of the clique inimical to you, we find it a matter of impossibility to obtain the publication of our address and your reply thereto. We feel certain that the refusal to give publication is in keeping with the editorial of the Nassau *Guardian* of the 21st instant, so as to make it appear abroad that the editorial is the opinion of the people.

We, however, who are aware of the real situation, know that public opinion is suppressed by the few who actually control the press of the city.

We regret this untoward state of affairs, and express without doubt the opinion that were we in telegraphic communication with the world, this high-handed and unjust state of affairs would not be tolerated.

On behalf of the signers of the address we are

Very sincerely yours,
(Signed,)

JOSEPH RORER,
W. F. ALBURY,
W. E. PRITCHARD,
LOUIS N. DUTY.

